Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1993

JEFFERY D. SCOTT,

Petitioner,

v.

STATE OF ALASKA,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of Alaska

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the determination of an Alaska Native village as a tribe for purposes of inherent sovereignty is a factual inquiry.

2. Or, in the alternative, whether the Secretary of the Interior's recent express federal recognition of the Native Village of Northway as an Indian tribe is a non-justiciable political question demanding judicial recognition by the State of Alaska.

PARTIES TO THE PROCEEDINGS

The parties to the proceedings are Jeffery D. Scott, petitioner, and the State of Alaska, respondent.

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PETITION FOR WRIT OF CERTIORARI

Jeffery D. Scott respectfully petitions for a Writ of Certiorari to review the decision of the Supreme Court for the State of Alaska in this case.

OPINIONS BELOW

The Alaska Supreme Court denied the petition for hearing in an unpublished order (Appendix A, App. A-1) *Scott v. State*, S-6114 (Alaska Jan. 24, 1994). The Memorandum Opinion and Judgment issued by the Alaska Court of Appeals is unpublished in *Scott v. State*, COA No. A-4789 (Alaska Ct. App. Nov. 24, 1993) (*See* Appendix B, App. B-1). The Order issued by the District Court on December 31, 1992 is unpublished. (Appendix C, App. C-1).

JURISDICTION

Jurisdiction of this Court to review the Alaska Supreme Court's decision in this matter is conferred by 28 U.S.C. Sec. 1257(3). The decision of the Alaska Supreme Court was filed on January 24, 1994.

STATEMENT OF THE CASE

This case arises out of the harvest of a moose for subsistence purposes by Scott, a non-Native, and an Athabascan Indian, Lavelle Jimmie, who both lived in the Native Village of Northway in Alaska. The moose was shot by Jimmie on May 8, 1992 on the north bank of the Nabesna River upriver from the village, located approximately 250 miles southeast of the city of Fairbanks.

The location of the harvest was within the Tetlin National Wildlife Refuge, which is largely federal public lands. It was also located on land which had been interim-conveyed to Northway Native, Inc., the village corporation for the Native Village of Northway pursuant to the *Alaska Native Claims Settlement Act (ANSCA)*, 43 U.S.C 1601 *et seq.*[1]

Scott was cited for a misdemeanor on May 8, 1992 by Alaska State Trooper Chuck Thorsrud for "Unlawful Possession of Game Moose" pursuant to 5 A.A.C. 92.140(a)

[1] The interim conveyance of the tract (designated I.D. 964) was made on November 9, 1984 pursuant to 43 U.S.C. 1613 and conveyed surface rights to the village corporation. Subsurface rights for the same tract were conveyed to Doyon Ltd., the regional corporation, pursuant to Interim Conveyance 965.

for assisting in the transport of the moose meat. Portions of the meat were found by the trooper in a smokehouse.

The historic ancestors of the Native Village of Northway are confirmed by the presence of Upper Tanana Athabascan peoples residing on the Chisana and Nabesna River drainages at the time of direct white man contact in the 1880s.[2]

Several trading posts were managed in the area, beginning in 1909 and 1910 with excursions by a Captain Northway from Fairbanks to the lower Nabesna River. *Case* at pg. 16. Four posts were located over the years near a camp site of the lower Nabesna River people near the present community site of Northway. *Id.*[3]

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[2] Martha F. Case, *Wild Resource Use in Northway Alaska.* Published by the Alaska Department of Fish and Game, Div. of Subsistence, June 1986, pg. 14.

In the 1920s, the Old Nabesna camp on the east bank of the Nabesna River had reportedly been in use for two generations by members of the Old Nabesna band. *Id.* at pg. 19. The Old Nabesna band inhabited the lower Chisana River from Gardiner Creek to its mouth, and the lower Nabesna River from approximately the Cheslina River to the mouth, and the confluence of the two rivers and the beginning of the Tanana River. *Id.* at pg. 24.

Members of this band travelled northward to the upper Ladue drainage, and utilized the lakes and streams south to the Black Hills east of the Nabesna River. *Id.* This constituted an area approximately 50 miles north-south and 25-30 miles east-west. *Id.* Two camps on the Nabesna River, called Nabesna Village of Old Nabesna, and Dry Creek, as well as several fish camps in the lower Nabesna and Chisana River area were occupied by this bank in the mid-20th century. *Id.*

[3] In the early 1940s the Old Nabesna settlement moved to its present location along the east bank of the Nabesna River to

Contemporary hunting areas for residents of the Native Village of Northway fall within former band territories, the descendants of which comprise a large portion of the current local hunting population. *Id.* at pg. 59.[4]

Athabascan is a linguistic family which includes Indians from Alaska, across Canada and extending down to the Canadian border.[5] The governmental organization of the semi-nomadic Indian tribes was not a complicated one. Each tribe was headed by an elected chief who had only as much authority as the individuals were willing to grant him.[6]

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avoid river erosion. *Case* at pg. 17. The Alaska Highway along the northern edge of the valley was completed in 1942, and an airstrip was constructed approximately seven miles south of the highway, and two miles from the Nabesna village. *Id.* A graded road connected the airstrip and village to the highway. *Id.* A post office was established in 1941, and the village name was changed to Northway. *Id.* A 1984 study of Northway households by ethnicity showed that 97% of the members of the Northway village were Alaska Natives. *Id.* at pg. 35.

[4] Northway residents harvested an estimated total of 90,091 edible pounds of wild resources between June 1987 and May 1988. Marcotte, James R., *Wild Fish and Game Harvest and Use by Residents of Five Upper Tanana Communities*, pub. by the Alaska Dept. of Fish and Game, Div. of Subsistence, Dec. 1991, pg. 121. Moose hunting was the second largest contributor comprising 26.8 percent of the harvest, with whitefish harvest the highest. *Id.*

[5] See Swann, John R., *Indian Tribes of Alaska and Canada, A Reprint of a Portion of "The Indian Tribes of North America"*, pub. Washington D.C. 1952.

[6] Sturtevant, W.C., *Handbook of North American Indians, Subaractic, Vol. 6*, Smithsonian Institute 1981, pg. 598.

The Athabascans of Interior Alaska populated the region since prior to the coming of the Russians in 1843. The Indians of

The Native Village of Northway is an "Indian tribe" as defined under 43 U.S.C. 1602(c).[7] The village also has

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the Interior were the last to come into contact with white men. When non-Natives entered the Interior of Alaska, they came first to trade, and later, generally, to exploit the natural resources of the indigenous peoples' territories. At first, the traders located their trading posts in or near the natives' semi-permanent settlements or ceremonial meetings places. Later, the trading posts were placed at a distance from the Native villages as the clash of cultural expectations between the Indians and the traders made the traders uncomfortable in close proximity to the Indians. *See Compilations of Narratives of Explorations in Alaska*, Government Printing Office, Washington, D.C. 1900, Report of Schwatka, pp. 341, 343; Report of Raymond, pp. 36-37. *See also* Hulley, Clarence C., *Alaska: Past and Present*, Binfords & Mort, Publishers, Portland, Oregon 1958, pg. 27; pg. 222-229.

After the arrival of the explorer and the trader, the church came soon after, and then the miner. *Alaska; Past and Present* at pp. 222-229. For the most part, the explorer and the miner were transients, leaving for new discoveries, new strikes, and new territories. There remained the trader, the church, and the Indian tribes, *Id.*

[7] 43 U.S.C. 1602(c) states that "Native village" means any tribe, band, clan, group, village, community, or association in Alaska listed in sections 1610 and 1615. 43 U.S.C. 1610(b)(1) contains a list of Native villages, one of which is the Native Village of Northway.

In *Noatak v. Hoffman*, 896 F.2d 1157 (9th Cir. 1990), *rev. on other grounds, Blatchford v. Native Village of Noutak*, 111 S.Ct. 2578 (1991), the Ninth Circuit found that the Alaska Native Claims Settlement Act (ANSCA) constituted Congressional recognition of Native villages as Indian tribes. In that case, the Ninth Circuit specifically found that the Native Village of Circle was an Indian tribe. This Court did not disturb that part of the Circuit Court's ruling.

The United States Department of the Interior's Solicitor's recent opinion supports the view that the Alaska Native villages listed in ANSCA are presumptively Indian tribes: ". . . we do

an active Tribal Court and Tribal Council. Its Tribal Court hears and makes decisions on matters brought before it pursuant to Tribal Law. The Tribal Council is the local law-making authority.

In the present case, Scott filed a Motion to Dismiss for lack of State jurisdiction, contending that the Native Village of Northway was an Indian tribe with inherent sovereign powers. The incident had occurred in "Indian Country" and Scott had engaged in subsistence activity which benefited the entire tribe. The Northway Tribal Court had authority and jurisdiction to regulate hunting in its Indian Country because of its inherent sovereign powers.

On October 2, 1992 an evidentiary hearing was held in front of the Honorable State of Alaska District Court Judge Charles Pengilly. Judge Pengilly denied the motion, stating that he was summarily denying it as a matter of law, without making any express factual findings. He cited *Native Village of Stevens v. A.M.P.*, 757 P.2d 32 (Alaska 1988) as controlling authority and that this case compelled rejection of Scott's claim, as a preliminary matter, that the Native Village of Northway retained inherent tribal sovereignty powers. This made all other issues moot.

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believe that there is sufficient merit to the first argument for the BIA and other agencies to proceed in the administration of programs on the presumption that Native villages listed on the modified ANSCA list are tribes." *See* Solicitor Memorandum, *Governmental Jurisdiction of Alaska Native Villages Over Land and Non-members*, pg. 59, M-36975, January 11, 1993.

On November 16, 1992 Scott was sentenced by the lower court and reserved the issue of State jurisdiction on appeal. A notice of appeal was filed on January 21, 1993 with the Alaska Court of Appeals, with a formal brief filed on April 5, 1993. On November 24, 1993 the Alaska Court of Appeals issued a three-page decision affirming the lower court's decision. *See* Appendix B.

The Alaska Court of Appeals based their decision solely upon the Alaska Supreme Court's decision in *Stevens v. A.M.P.* also:

> "We are bound by the Supreme Court's decision in *Native Village of Stevens v. A.M.P.* We conclude, did the district court, that the village of Northway is not sovereign. In particular, Scott presented no evidence in the trial court that Congress intended the transfer of land to the village under ANSCA to create an Indian reservation. Absent such evidence, there is no basis on which to consider whether Northway Village might qualify for an exception to the rule of Native Village of Stevens."
>
> MOI No. 2815, pg. 2.

Scott appealed this decision to the Alaska Supreme Court in a Petition for Hearing filed December 9, 1993. The petition was denied without explanation by the court on January 24, 1994. This Petition for Certiorari follows.

REASONS FOR GRANTING THE WRIT

A. Summary

The decision of the Alaska Supreme Court is in direct conflict with the opinions of the Ninth Circuit Court of Appeals on a matter of federal Indian law. The Ninth Circuit has held that Alaska Native village sovereignty exists unless and until affirmatively divested by Congress. An express factual inquiry must be made to determine whether a village is an Indian tribe is the modern-day successor to a sovereign historical band of natives. The Alaska State Supreme court's decision specifically rejects this position by upholding the lower court's opinion that the Native Village of Northway is not an Indian tribe as a matter of law, in the absence of factual inquiry. According to Alaska State law, no factual inquiry is required to determine whether an Alaska Native village has tribal status.

As a consequence of this fundamental view, the Alaska Supreme Court's decisions on issues concerning the status of Indian tribes in Alaska are in direct conflict with the Ninth Circuit, and as the Alaska State Supreme Court has noted, are only resolvable by this Court.

The conflicting decisions involve an important legal issue which has a significant impact upon many individuals, tribes, and the State of Alaska's relationship with Indians and Indian tribes. The decision will directly affect over 200 Alaskan tribes, many of which are currently exercising tribal court jurisdiction. This matter will continue to arise as long as the Alaska State courts hold that Alaska Native villages are not Indian tribes as a matter of law.

In the alternative, the Secretary of the Interior's recent express federal recognition of Alaska Native villages as Indian tribes is a non-justiciable political question which demands judicial recognition by the State of Alaska. This decision is instead committed to the Department of Interior, and an opposite conclusion reached by the Alaska State court at this point results in conflict if respect for the executive branch's decision is not given.

B. Reasons

I. Direct Conflict Between Ninth Circuit and Alaska Supreme Court.

The ruling of the Alaska Supreme Court affirming the Alaska Court of Appeals' decision directly conflicts with the decision of the Ninth Circuit Court of Appeals in *Native Village of Venetie I.R.A. Council v. Alaska*, 944 F.2d 548 (9th Cir. 1991). In that case, the Ninth Circuit squarely addressed the issue of whether Alaska Native villages are inherently sovereign, specifically the Native Villages of Venetie and Fort Yukon. The Court stated:

> " . . . if native groups in Alaska were sovereign prior to the incorporation of the land mass into the United States, they could lose their sovereignty only by express act of Congress or assimilation by the natives into non-native culture. Indian sovereignty flows from the historical roots of the Indian tribe . . . Tribal sovereignty exists unless and until affirmatively divested by Congress . . . If the native villages of Venetie and Fort Yukon are the modern-day successors to sovereign historical bands of natives, the villages are to be afforded the same rights and responsibilities as are sovereign bands of native

Americans in the continental United States." *Id.* at 558, 559.

In *Native Village of Venetie,* the court reversed the district court and remanded the case for further factual inquiry. The Ninth Circuit used the same analysis in *Native Village of Tyonek v. Puckett,* No. 87-3569, pg. 9 (9th Cir. Mar. 1992) when it remanded the case back to the District Court because it had failed to enter express findings of fact or develop a record to support its conclusion that the Native Village of Tyonek was an Indian tribe protected by sovereign immunity.

The Ninth Circuit also held in an earlier decision that ANSCA corporations may be considered "Indian Country." *Native Village of Tyonek v. Puckett,* No. 87-3569, pg. 354 (9th Cir. Jan. 13, 1992)

On the other hand, the Alaska Supreme Court has taken an opposite view. In *Stevens Village v. A.M.P.,* 757 P.2d 32, 34 (Alaska 1988) the court held that Congress has indicated that Alaskan Native groups should not be treated as sovereigns. *See also In the Matter of F.P.,* 843 P.2d 1214, 1215 n. 1 (Alaska 1992), *cert. den.,* 61 USLW 3669, 113 S.Ct. 2441 (1993) (the Alaska Supreme Court admitting that *Native Village of Venetie* is contrary to *Native Village of Stevens v. A.M.P.* and that "the courts of Alaska are not bound by the decisions of a federal court other than the United States Supreme Court."). *See also Totemoff v. State of Alaska,* COA No. A-4276/4308, pg. 9 (Alaska Ct. App. Dec. 23, 1993) (While several federal cases seemingly allow defendants charged with fish and game violations to raise subsistence-based defenses, no federal court other than the United States Supreme Court can control

the decisions of state courts, even on questions of federal law.)

As a consequence of this fundamental view, the Alaska Supreme Court's decisions on issues concerning the status of Indian tribes in Alaska are in direct conflict with the Ninth Circuit, and, as noted by the Alaska Supreme Court in *F.P.*, are only resolvable by this Court.

The Alaska Court of Appeals based its decision in this case solely on the lower court's unsupported conclusion that Northway was not sovereign, under *Stevens v. A.M.P.* A result of this decision is that the Alaska State court has now decided that ANSCA corporation land is not "Indian Country" as a matter of law, in the absence of factual inquiry. Another result is that judicial determinations of tribal sovereignty are now allowed as a matter of law in the absence of express factual findings. These results not only affect Scott's case and his ability to subsistence hunt in "Indian Country", but also the status of the Native Village of Northway and all other Indian tribes in Alaska.

Unless Congress has expressly ceded its authority, a State is without authority to manage hunting and fishing in "Indian Country." *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 76 L.Ed.2d 611, 627, 103 S.Ct. 2378 (1983). This Court found that the Mescalero Apache Tribe lawfully exercised substantial control over the lands and resources of its reservation, including its wildlife. *Id.* Because of their sovereign status, tribes and their lands are insulated in some respects by a historic immunity from state and local control. *Id.* The sovereignty retained by tribes includes the power of regulating their internal

and social relations. *Id.*; *See also United States v. Kagama*, 118 U.S. 375, 381-382, 30 L.Ed. 228, 6 S.Ct. 1109 (1886); *United States v. Wheeler*, 435 U.S. 313, 322, 55 L.Ed.2d 303, 98 S.Ct. 1079 (1978).

Tribes in general retain this authority to regulate the use of its resources by members as well as nonmembers. *Mescalero* at L.Ed.2d 622; *Montana v. United States*, 450 U.S. 544, 558-559, 67 L.Ed.2d 493, 510-11, 101 S.Ct. 1245 (1981) (the tribe may prohibit nonmembers from hunting and fishing on land belonging to the tribe; a tribe may retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe); *United States v. Winans*, 190 U.S. 371, 381, 49 L.Ed. 1089, 25 S.Ct. 662 (1905) (hunting and fishing were not much less necessary to the existence of the Indians than the atmosphere they breathed).

The Court in *Mescalero* also stated that this aspect of tribal sovereignty has been expressly confirmed by numerous federal statutes. *Id.* at L.Ed.2d 623. P.L. 280 specifically confirms that power of tribes to regulate on-reservation hunting and fishing.[8]

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[8] In *California v. Cabazon Band of Indians*, 480 U.S. 202, 94 L.Ed.2d 244, 254, 107 S.Ct. 1083 (1987), the Court stated that when a State seeks to enforce a law within an Indian reservation under the authority of P.L. 280, it must be determined whether the law is criminal in nature, and thus fully applicable to the reservation or civil in nature, and applicable only as it may be relevant to private civil litigation in state court. The Court employed a new test that originated in *Barona Group of the Captitan*, 694 F.2d 1185 (1982), *cert. den.*, 461 U.S. 929, 77 L.Ed.2d

In *Native Village of Venetie I.R.A. Council v. Alaska*, 944 F.2d 548, 560 (9th Cir. 1991), the court found that P.L. 280 was designed not to supplant tribal institutions, but to supplement them. P.L. 280 is not a divestiture statute. *Id.*[9]

301, 103 S.Ct. 2091 (1983). In *Barona*, the Court drew a distinction between state "criminal/prohibitory" laws and state "civil/regulatory" laws: if the intent of a state law is generally to prohibit certain conduct, it falls within P.L. 280's grant of criminal jurisdiction, but if the state law generally permits the conduct, subject to regulation, it must be classified as civil/regulatory and P.L. 280 does not authorize its enforcement on an Indian reservation. *Id.*

This rule was employed in *Oneida Tribe of Indians of Wisconsin v. State*, 518 F. Supp. 712, 719, 720 (W.D. Wisc. 1981) where the court found that Wisconsin's bingo laws were civil-regulatory, not enforceable by the State in Indian Country. Congress did not intend to allow states to use licensing requirements in an attempt to create jurisdiction to enforce otherwise civil regulations on Indian reservations. *See also Seminole Tribe of Florida v. Butterworth*, 658 F.2d 310 (5th Cir. 1981) (Florida bingo statute is "civil/regulatory", rather than "criminal/prohibitory" in nature); *United States v. Farris*, 624 F.2d 890 (9th Cir. 1980); *United States v. County of Humboldt*, 615 F.2d 1280 (9th Cir. 1980); *Santa Rosa Band of Indians v. Kings County*, 532 F.2d 655 (9th Cir. 1975).

In *United States v. Marcyes*, 557 F.2d 1361 (9th Cir. 1977) the court examined the State's fireworks laws and found that it was prohibitory, rather than regulatory. It stated, "The possession of fireworks is not the same situation encountered in other regulatory schemes such as hunting and fishing, where a person who wants to hunt or fish merely has to pay a fee and obtain a license." *Id.* at 1364.

[9] *Walker v. Rushing*, 898 F.2d 672, 675 (8th Cir. 1990) (P.L. 280 did not itself divest Indian tribes of their sovereign power to punish their own members for violations of tribal law; nothing in the wording of P.L. 280 or its legislative history precludes concurrent jurisdiction).

It is clear that a jurisdictional presumption exists in federal Indian law that a state has no jurisdiction over Indians on reservations unless it has been explicitly granted that jurisdiction. *People of South Naknek v. Bristol Bay Borough,* 466 F. Supp. 870 (D. Alaska 1979).

Finally, the implications of the State court's decision not only detrimentally affects Scott's right to assist the tribe in procuring food, but also directly affects the sovereignty rights of the village and all Indian tribes in Alaska. Scott was within Indian Country and was engaging in essential tribal relations in the customary and traditional practice of subsistence hunting. These essential tribal relations are protected within the tribe's Indian Country. His assistance in procuring food for the tribe had a direct effect upon the tribe's welfare. Therefore, the tribe had an extremely important interest in regulating this activity.

The state had no direct or comparable interest in regulating fish and game within this Indian Country. The State instead has an interest in sustaining fish and game populations for all residents of Alaska, non-Native and Native under its present Constitution.

The tribe's intimate interest in sustaining the existence of the tribe and its intimate familiarity with the fish and game populations within its Indian Country borders far outweigh any interests the State has in asserting its civil jurisdiction there. These tribal interests preempt any asserted State authority.

The lower State court did not reach these issues of the civil authority of the Native Village of Northway to regulate hunting in "Indian Country" and whether ANSCA land was "Indian Country" because it found as a

matter of law that the Native Village of Northway was not an Indian tribe.

The petitioner respectfully requests that this Court reverse the lower court and remand the case back to the lower State court for a full factual inquiry with express findings on the issue of whether the Native Village of Northway is an Indian tribe for purposes of inherent tribal sovereignty.

II. The Alaska Supreme Court has decided an important question of federal law that conflicts with applicable decisions of this Court.

In January 1993 the Solicitor of the Department of the Interior issued an opinion analyzing the status of Alaska Native villages as Indian tribes. The Solicitor stated:

> " . . . While the Department's position with regard to the existence of tribes in Alaska may have vacillated between 1867 and the opening decades of this century, it is clear that for the last half century, Congress and the Department have dealt with Alaska Natives as though there were tribes in Alaska. The fact that the Congress and the Department may not have dealt with all Alaska Natives as tribes at all times prior to the 1930s did not preclude it from dealing with them as tribes subsequently."
>
> So. Op. M-36, 975, at 46, 47-48 (Jan 11, 1993).

For the purposes of his opinion, the Solicitor found it unnecessary to identify those villages which were tribes, although he stated that the ANSCA village listing and the inclusion of these villages over the years within the definition of "tribe" arguably constituted a congressional

determination that the villages found eligible for benefits under ANSCA are considered Indian tribes for purposes of federal law. *Id.* at 58-59.

On October 15, 1993 the Assistant Secretary of the Interior of Indian Affairs, Ada E. Deer, under the Department of the Interior, announced a new revised list of federally acknowledged Indian tribes in the United States. The announcement stated:

> "The Bureau of Indian Affairs has reviewed the 'modified ANSCA list' of villages and the list of those villages and regional tribes previously listed or dealt with by the Federal Government as governments and found that the villages and regional tribes listed below have functioned as political entities exercising governmental authority and are, therefore, acknowledged to have the immunities and privileges available to other federally acknowledged Indian tribes by virtue of their status as Indian tribes as well as the responsibilities and obligations of other tribes.
>
> The purpose of the current publication is to publish an Alaska list of entities conforming to the intent of 25 C.F.R. Sec. 83.6(b) *and to eliminate any doubt as the Department's intention by expressly and unequivocally acknowledging that the Department has determined that the villages and regional tribes listed below are distinctly Native communities and have the same status as tribes in the contiguous 48 states. Such acknowledgment of tribal existence by the Department is a prerequisite to the protection, services, and benefits from the Federal Government available to Indian tribes.* This list is published to clarify that the villages and

> regional tribes listed below are not simply eligible for services, or recognized as tribes for certain narrow purposes. Rather, they have the same governmental status as other federally acknowledged Indian tribes by virtue of their status as Indian tribes with a government-to-government relationship with the United States; are entitled to the same protection, immunities, privileges as other acknowledged tribes; have the right, subject to general principles of Federal Indian law, to exercise the same inherent and delegated authorities available to other tribes; and are subject to the same limitations imposed by law on other tribes."
>
> *Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs,* pub. pursuant to 25 C.F.R., Part 83, Notice October 15, 1993 by Assistant Secretary of Indian Affairs Ada Deer, Bureau of Indian Affairs.

The Native Village of Northway is on the list recognized as an Indian tribe. *Id.* at pg. 35.

Because of the federal Bureau of Indian Affairs' long experience in determining who is an Indian for a variety of purposes, its determinations are also entitled to great deference. *United States v. Sandoval,* 231 U.S. 27 (1913).

The Bureau of Indian Affairs' determination that the Native Village of Northway is an Indian tribe and the recent Department of Interior's solicitor's opinion is clear and unequivocal federal recognition of the village as an Indian tribe.

According to the Alaska State Supreme Court's analysis in *Native Village of Stevens v. A.M.P.,* 757 at pg. 32-25,

judicial recognition of tribal sovereignty turns on whether Congress, or the executive branch of the federal government, had recognized the particular group in question as a tribe. *See also Atkinson v. Haldane*, 569 P.2d 151, 161-63 (Alaska 1977).

Here, the Native Village of Northway has been officially recognized by the executive branch of the federal government as an Indian tribe.

In *Baker v. Carr*, 369 U.S. 186, 210, 82 S.Ct. 691, 706, 7 L.Ed.2d 663 (1962), this Court listed a series of factors, at least one of which must be present in order to make an issue a non-justiciable political question. These factors included textually demonstrable constitutional commitment of the issue to a coordinate political department; a lack of judicially discoverable and manageable standards for resolving the issue; the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; an unusual need for unquestioning adherence to a political decision already made; and the potential for embarrassment from multifarious pronouncements by various departments on one question. *Id.*

It is clear that in light of these recent decisions made by the Department of Interior and this Court's ruling in *Baker* that the status of Northway as an Indian tribe is a political question committed to the Department of Interior. It is also clear that an opposite conclusion reached by the Alaska State court at this point results in conflict and embarrassment if respect for the executive branch's decision is not given.

The time is ripe for this Court to resolve the unending tug of war between the Alaska courts and the federal government over who has the authority to decide what Alaska Native villages are Indian tribes and whether they retain inherent tribal sovereign powers. This unresolved conflict has resulted in the lack of State court recognition of Indian tribes in Alaska. It is unfair to persons in Alaska who are not afforded their right to be governed by Tribal Law and to tribal governments who lack a government-to-government relationship with the State of Alaska. Finally, it has resulted in years of lengthy and unsuccessful litigation for persons and tribes to prove tribal status to the State of Alaska, even in the face of express federal government recognition of tribal status.

Therefore, the federal government executive branch's acknowledgment of the Native Village of Northway as an Indian tribe is express federal recognition of the sovereign status of the village. This case should be reversed on this issue and remanded to the trial court in light of this clear federal recognition.

CONCLUSION

For the foregoing reasons, the Alaska Supreme Court's decision should be reviewed and reversed by this Court. The Petition for Writ of Certiorari should be granted.

Respectfully submitted,

MICHAEL J. WALLERI

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Counsel of Record

April 25, 1994

Appellate Court Clerk
303 K Street
Anchorage, AK 99501

Case Title: Scott v. State

Supreme Court Case #: 86114

* * * ORDER * * * 01/24/94

IT IS ORDERED: The petition for hearing, filed on December 9, 1993, is DENIED. Entered by direction of the Alaska Supreme Court. (Bryner, Justice pro tem, not participating.)

4TO-92-83CR

cc: Justice, COA Judges, Judge Pengilly, AppDiv./FBX

jh

Clerk of The Appellate Courts

Sheri Donaldson
Tanana Chiefs Conference, Inc.
122 First Avenue
Fairbanks, AK 99701

THE COURT OF APPEALS OF THE STATE OF ALASKA

JEFFERY D. SCOTT, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-4789 Trial Court No. 4TO-S92-83CR MEMORANDUM OPINION AND JUDGMENT* [No. 2815 – November 24, 1993]

Appeal from the District Court, Fourth Judicial District, Tok, Charles Pengilly, Judge.

Appearances: Sheri L. Donaldson, Tanana Chiefs Conference, Inc., Fairbanks, for Appellant. Jeffrey O'Bryant, Assistant District Attorney, Harry L. Davis, District Attorney, Fairbanks, and Charles E. Cole, Attorney General, Juneau, for Appellee.

Before: Bryner, Chief Judge, Coats and Mannheimer, Judges.

COATS, Judge.

Jeffery D. Scott was charged with illegal possession of moose meat in violation of 5 AAC 92.140(a). That regulation provides that no person may possess game or parts of game that the person knows or should know

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* Entered pursuant to Appellate Rule 214 and Guidelines for Publication of Court of Appeals Decisions (Court of Appeals Order No. 3).

were taken in violation of AS 15 or a regulation adopted thereunder. Scott was cited for possessing the meat of a freshly killed moose at a time when there was no open season for moose hunting.

Scott moved to dismiss the charge on the ground that the state did not have jurisdiction to prosecute him. Scott claimed that the moose had been killed on land that had been conveyed to the village corporation of Northway Native, Inc., in accordance with the Alaska Native Claims Settlement Act (ANCSA). He argued that the authority of the village of Northway to regulate hunting on its ANCSA land preempts state authority to regulate hunting on that land.

District Court Judge Charles Pengilly denied Scott's motion to dismiss. Judge Pengilly assumed for purposes of his decision that the moose had been taken on ANCSA land, but ruled that the Alaska Supreme Court's decision in *Native Village of Stevens v. A.M.P.*, 757 P.2d 32 (Alaska 1988), compelled the rejection of Scott's claim of native sovereignty.

Scott's claim is that the Alaska Natives of the Northway Village corporation have the authority, as an aspect of tribal sovereignty, to regulate hunting in their "Indian country."[1] We are bound the Supreme Court's decision in *Native Village of Stevens v. A.M.P.* We conclude, as did the district court, that the village of Northway is not sovereign. In particular, Scott presented no evidence in the trial court that Congress intended the transfer of land to the village under ANCSA to create an Indian reservation.

---

[1] "Indian Country" is defined at 18 U.S.C. § 1151.

Absent such evidence, there is no basis on which to consider whether Northway Village might qualify for an exception to the rule of *Native Village of Stevens*.[2] The district court did not err in denying Scott's motion to dismiss.

The judgment of the district court is AFFIRMED.

---

[2] Scott presented no evidence in the trial court establishing any basis for concluding that Northway Village's ANCSA lands can be exempted from the Alaska Supreme Court's ruling in *Native Village of Stevens*.

C-1

IN THE DISTRICT COURT FOR THE STATE OF ALASKA
AT FAIRBANKS

STATE OF ALASKA,
Plaintiff,
vs.
JEFFERY DOUGLAS SCOTT,
Defendant.
DOB: March 1, 1970
DOV: May 8, 1992
ID: 6326335
ATN: 100135028

Case No: 4TO-S92-0083 CR

ORDER SUSPENDING IMPOSITION OF SENTENCE

(Filed Jan. 11, 1993)

Offense charged:

Count	Offense	Statute Violated
I	Unlawful Possession of Game	5 AAC 92.140(a)

Based on the defendant's plea of no contest, he was found and adjudged Guilty of the offense charged above and sentenced based on the agreement of the parties and pursuant to Alaska Criminal Rule 11(e).

IT IS ORDERED THAT:

Imposition of sentence is suspended and defendant is placed on probation until November 16, 1993, subject to the following conditions:

1. Good behavior; no jailable offenses.
2. Defendant shall perform 20 hours of community service work and provide proof to the court.
3. Game parts currently held by the state are forfeited.

Execution of sentence is STAYED pending appeal.

November 16, 1992 /s/ Charles R. Pengilly
Effective Date Charles R. Pengilly
dt District Court Judge
Date Signed 12-31-92

(2)

Supreme Court, U.S.
FILED
JUL 6 1994
OFFICE OF THE CLERK

No. 93-1690

In The

Supreme Court of the United States

October Term, 1993

JEFFREY D. SCOTT,
Petitioner,

v.

STATE OF ALASKA,
Respondent.

On Petition for Writ of Certiorari To the Alaska Court of Appeals

BRIEF IN OPPOSITION

Kenneth M. Rosenstein
Assistant Attorney General
Office of Special Prosecutions and Appeals
Alaska Department of Law
310 K Street, Suite 308
Anchorage, Alaska 99501
(907)269-6250

Counsel for Respondent

34pp

QUESTION PRESENTED

1. Should this Court decline to exercise its powers of discretionary review because Scott is asking for a remand to make a factual showing Scott failed to make in the first instance?

2. Does the district court of the State of Alaska have jurisdiction over a criminal prosecution of a non-Indian for an offense committed on village corporation lands?

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AUTHORITIES RELIED UPON

Statutes

43 United States Code § 1603(b) provides:

> All aboriginal titles, if any, and claims of aboriginal title in Alaska based on use and occupancy, including submerged land underneath all water areas, both inland and offshore, and including any aboriginal hunting or fishing rights that may exist, are hereby extinguished.

Alaska Statute 16.05.925 provides:

> Except as provided in AS 16.05.430, 16.05.722, 16.05.723, 16.05.831, and 16.05.860, a person who violates AS 16.05.920 or 16.05.921, or a regulation adopted under this chapter or AS 16.20, is guilty of a class A misdemeanor.

Rule

Alaska Rule of Criminal Procedure 35.1 provides:

> *Post Conviction Procedure.*
>
> (a) *Scope.* Any person who has been convicted of, or sentenced for, a crime and who claims;
>
> (1) that the conviction or the sentence was in violation of the constitution of the United States or the constitution or laws of Alaska;
>
> (2) that the court was without jurisdiction to impose sentence;
>
> (3) that the sentence imposed exceeded the maximum authorized by law, or is otherwise not in accordance with the sentence authorized by law;
>
> (4) that there exists evidence of material facts, not previously presented

and heard, that requires vacation of the conviction or sentence in the interest of justice;

(5) that his sentence has expired, his probation, parole or conditional release have been unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint;

(6) that the conviction or sentence is otherwise subject to collateral attack upon any ground or alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding, or remedy; or

(7) that there has been a significant change in law, whether substantive or procedural, applied in the process leading to applicant's conviction or sentence, when sufficient reasons exist to allow retroactive application of the changed legal standards;

may institute a proceeding under this rule to secure relief.

(b) *Not a Substitute for Remedies in Trial Court -- Replaces All Other Remedies for Challenging the Validity of a Sentence.* This remedy is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction. It is intended to provide a standard procedure for accomplishing the objectives of all of the constitutional, statutory or common law writs.

(c) *Commencement of Proceedings -- Filing -- Service.* A proceeding is commenced by filing an application with the clerk of the court in which the conviction occurred. Application forms will be furnished by the clerk of court. An application amy be filed at any time. The clerk shall open a new file for the application, promptly bring it to the attention of the court and give a copy to the district attorney.

(d) *Application -- Contents.* The application shall (1) identify the proceedings in which the applicant was convicted, (2) state the date shown in the clerk's certificate of distribution on

the judgment complained of, (3) state the sentence complained of and the date of sentencing, (4) specifically set forth the grounds upon which the application is based, and (5) clearly state the relief desired. Facts within the personal knowledge of the applicant shall be set forth separately from other allegations of facts and shall be under oath. Affidavits, records, or other evidence supporting its allegations shall be attached to the application or the application shall recite why they are not attached. The application shall identify all previous proceedings, together with the grounds therein asserted, taken by the applicant to secure relief from his conviction or sentence. Argument, citations and discussion of authorities are unnecessary. Applications which are incomplete shall be returned to the applicant for completion.

(e) *Indigent Applicant.* If the applicant is indigent, filing fees, transcript and other court costs shall be borne by the state. Where the court determines that the application shall not be summarily disposed of on the pleadings and record pursuant to subdivision (f) of this rule, but that the issues raised by the application require an evidentiary hearing, counsel shall be appointed to assist indigent applicants.

(f) *Pleadings and Judgments on Pleadings.*

(1) Within 30 days after the filing of the application, or within such further time as the court may fix, the state shall respond by answer or by motion which may be supported by affidavits. At any time prior to entry of judgment the court may grant leave to withdraw the application. The court may make appropriate orders for amendment of the application or any pleading or motion, for pleading over, for filing further pleadings or motions, or for extending the time of the filing of any pleading. In considering the application the court shall consider substance and disregard defects of form. If the application is not accompanied by the record of the proceedings challenged therein, the respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application.

(2) When the court is satisfied, on the basis of the application, the answer or motion, and the record, that the applicant is not entitled to postconviction relief and no purpose would be served by any further proceedings, it may indicate to the parties its intention to dismiss the application and its reasons for so doing. The applicant shall be given an opportunity to reply to the proposed dismissal. In light of the reply, or on default thereof, the court may order the application dismissed or grant leave to file an amended application or direct that the proceedings otherwise continue. Disposition on the pleadings and record shall not be made when a material issue of fact exists.

(3) The court may grant a motion by either party for summary disposition of the application when it appears from the pleadings, depositions, answers to interrogatories, and admissions and agreements of fact, together with any affidavits submitted, that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.

(g) *Hearing -- Evidence -- Order.* The application shall be heard in, and before any judge of, the court in which the conviction took place. An electronic recording of the proceeding shall be made. All rules and statutes applicable in civil proceedings, including pre-trial and discovery procedures are available to the parties. The court may receive proof by affidavits, depositions, oral testimony, or other evidence. The court may order the applicant brought before it for the hearing. If the court finds in favor of the applicant, it shall enter an appropriate order with respect to the conviction or sentence in the former proceedings, and any supplementary orders as to rearraignment, retrial, custody, bail, discharge, correction of sentence, or other matters that may be necessary and proper. The court shall make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented. The order made by the court is a final judgment.

(h) *Waiver of or Failure to Assert Claims.* All grounds for relief available to an applicant under this rule must be raised in his

> original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application.

Other

5 Alaska Administrative Code 92.140(a) provides:

> No person may possess, transport, give, receive, or barter game or parts of game that the person knows or should know were taken in violation of AS 16 or a regulation adopted under AS 16.

STATEMENT OF THE CASE

Statement of Facts

On May 7, 1992, the Alaska State Troopers received an anonymous tip that two people, one a Caucasian male named "Jeff" and the other a juvenile, were unloading a moose from a truck at a residence in Northway, Alaska.[1] The residence belonged to the father of the woman with whom Jeffrey Scott was living. There was no open season for the taking of moose at the time. The truck was described as a small navy blue pickup, possibly a Ford.

On May 8, two troopers went to the residence. Inside, they were introduced to Scott. Scott agreed to talk to the troopers. He admitted that he (Scott) had been present when a juvenile killed the moose and that he transported the carcass in his blue pickup truck.

Statement of Proceedings

Scott was charged in Alaska district court with unlawful possession of game moose under 5 AAC 92.140(a), a class A misdemeanor offense. *See* AS 16.05.925. Scott moved to dismiss the case, arguing that the state court did not have jurisdiction over the prosecution. According to Scott, the moose had been taken in Indian Country where the state lacked the authority to manage hunting. Scott did not establish, with any precision, where the moose had been killed, although the state did not dispute Scott's assertion that it had been taken on land owned by

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[1] Northway is an Alaska Native village recognized in the Alaska Native Claim Settlement Act. *See* 43 U.S.C. § 1610(b)(1).

Northway, Inc.[2] In addition, Scott offered no evidence that the land on which moose had been taken constituted Indian Country. The district court denied the motion.

Scott entered a no contest plea, reserving his right to appeal the jurisdictional issue. The district court suspended imposition of sentence conditioned upon Scott's payment of a $250 fine and performance of twenty hours of community work service.

Scott appealed to the Alaska court of appeals. His conviction was affirmed. *Scott v. State*, Mem. Op. No. 2815 (Alaska App. November 24, 1993). Scott's petition for hearing to the Alaska Supreme Court was denied in an unpublished order, dated January 24, 1994. His petition to this Court followed.

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[2] Northway, Inc. is a village corporation organized under Alaska law pursuant to ANCSA. *See* 43 U.S.C. § 1607. It is a separate and distinct entity from the Village of Northway.

REASONS FOR DENYING THE WRIT

I. Introduction and summary

It is important to recognize at the outset some important facets of this case. Nor does it involve the right of an Alaska Native to hunt on Native land. It does not involve enforcement of regulations promulgated by an Alaska Native group to control hunting on their land. Who killed the moose and when are not at issue. This case involves the possession by a non-Native of freshly killed moose meat at a time when there was no open season on moose.

Scott failed to present factual evidence supporting his claim that his conduct was subject to control by a sovereign authority other than the state. The Village of Northway does not have sovereign jurisdiction over this case as a matter of law. If such authority ever existed, it was extinguished by Congress in the Alaska Native Claims Settlement Act. Even if the village has inherent sovereign authority over this case, it does not exist in a vacuum. The state retains concurrent jurisdiction over the taking of game on village lands until such time as the village exercises whatever power it might have to establish its own regulatory scheme.

II. Argument

1. Scott is asking this Court to consider matters not presented to the trial court

Scott seeks to persuade this Court that Northway constitutes Indian Country by citing the Department of Interior's notice formally recognizing the village as an Indian tribe. (Pet. Br. at 16-17) This departmental action took place on October 15, 1993, during the pen-

dency of Scott's appeal to the Alaska Court of Appeals, and was never presented to the state trial court. Documents and exhibits which have not been filed in the trial court are not part of the appellate record and may not be considered on appeal. *United States v. Sanga*, 967 F.2d 1332, 1336 n.2 (9th Cir. 1992). Therefore, the Department of Interior notice should not be considered by this Court.

Scott is not left without remedy regarding new matters coming to light after his conviction. Alaska Criminal Rule 35.1 permits a defendant to petition the district court for relief for a variety of reasons, including "that the court was without jurisdiction to impose sentence." Rule 35.1(a)(2), Alaska R. Cr. P. If Scott wishes to make a factual record, he should avail himself of this remedy.

2. Scott presented no evidence that the Native Village of Northway had the sovereign power of his conduct

Scott's motion in the district court cited a host of secondary authorities, repeated in his petition, which he claimed support the conclusion that the Village of Northway has sovereign jurisdiction over this case. (*See* Appendix, *infra*, A-4 - A-5.) But he did not present any affidavits from expert or lay witnesses to establish the factual basis for his sovereignty claim. Moreover, allegations in motion papers and affidavits, although sufficient to raise an issue, are not the competent proof necessary to support the motion. *See Cohen v. United States*, 378 F.2d 751, 761 (9th Cir.), *cert. denied*, 389 U.S. 897, 88 S.Ct. 217, 19 L.Ed.2d 215 (1967).

Scott, by relying entirely on secondary authorities, rather than presenting affidavits, cast the issue as a legal, not a factual, matter.

Having elected to present no *evidence* in the state trial court supporting his claim that the Village of Northway had sovereign jurisdiction, Scott should not now be heard to complain that the trial court applied the wrong standard or that he was precluded from presenting evidence.

Scott asks this Court to reverse his conviction and to remand his case to enable the trial court to make a factual inquiry into the sovereignty issue. (Pet. Br. at 15) However, he has already had the opportunity to make a factual record below, but did not do so. Under these circumstances this Court should not exercise discretionary review, particularly when there is a state procedure available that would enable Scott to present the factual basis for his claim. *See* Rule 35.1, Alaska R. of Cr. P.

3. The Village of Northway does not have sovereign power over hunting on land owned by Northway, Inc.

Scott asserts that he could not be prosecuted in state court for a criminal offense that allegedly took place on land owned by a Native village corporation created pursuant to the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1601, *et seq.* According to Scott, his conduct which is the focus of this case took place on land owned by Northway, Inc., a corporation established under ANCSA. This land, Scott reasons, constitutes Indian Country over which the Native Village of Northway has sovereign jurisdiction. His petition lays out an essentially procedural argument claiming that the state court failed to make the factual inquiry and enter appropriate findings regarding whether the village is an Indian tribe with sovereign jurisdiction over game resources on its lands. *See Native Village of Tyonek v. Puckett*, 957 F.2d 631, 635

(9th Cir. 1992) (trial court must make factual findings to support conclusion the Native village was Indian tribe protected by sovereign immunity). Scott ignores that as a purely legal matter Congress divested the village of whatever sovereign control over game resources it might have had.

This Court, in *United States v. Wheeler*, 435 U.S. 313, 98 S.Ct. 1079, 55 L.Ed.2d 303 (1978), recognized that the sovereignty possessed by Indian tribes "exists only at the sufferance of Congress and is subject to complete defeasance." *Id.* at 323, 98 S.Ct. at 1086. *See also Tee-Hit-Ton Indians v. United States*, 348 U.S. 272, 75 S.Ct. 313, 99 L.Ed. 314 (1955). Thus, Congress has the power to limit or entirely eliminate an Indian tribe's sovereign rights. Congress has done exactly this with respect to Alaska Native sovereign rights over game resources.

In 1971 Congress enacted and the President signed into law ANCSA. In section 4(b), Congress stated:

> All aboriginal titles, if any, and claims of aboriginal title in Alaska based on use and occupancy, including submerged land underneath all water areas, both inland and offshore, and including *any aboriginal hunting or fishing rights that may exist, are hereby extinguished.*

43 U.S.C. § 1603(b) (emphasis added). The Ninth Circuit Court of Appeals confirmed that this provision extinguished aboriginal hunting and fishing rights in Alaska. *People of Village of Gambell v. Clark*, 746 F.2d 572, 574 (9th Cir. 1984), *rev'd sub nom. on other grounds, Amoco Production Co. v. Village of Gambell, Alaska*, 480 U.S. 531, 107 S.Ct. 1396, 94 L.Ed.2d 542 (1987) (holding ANCSA did not extinguish aboriginal rights on the outer continental shelf); *see also United States v. Atlantic Richfield Co.*, 612 F.2d 1132, 1134 (9th Cir.) (ANCSA extinguished not

only aboriginal title, but claims based on aboriginal title), *cert. denied*, 449 U.S. 888, 107 S.Ct. 243, 66 L.Ed.2d 113 (1980); *cf. Menominee Tribe of Indians v. United States*, 391 U.S. 404, 88 S.Ct. 1705, 20 L.Ed.2d 697 (1968) (hunting rights preserved under treaty not extinguished by termination act). It is axiomatic that, by extinguishing Alaska Natives' aboriginal hunting rights, ANCSA terminated Native sovereign power to regulate hunting on the lands granted to Natives under the act.

In view of the Congressional extinguishment of Alaska Native sovereign power over hunting on Native land, Scott's jurisdictional claim fails as a matter of law. Consequently, remanding this case for further factual findings is unnecessary.

4. Recognition of Native sovereignty in this instance would create a law enforcement vacuum

Assuming that the Village of Northway has sovereign power over hunting and fishing on lands owned by Northway, Inc., there is no basis for concluding that state lacks concurrent jurisdiction to apply state hunting laws to non-Natives. In *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 103 S.Ct. 2378, 76 L.Ed.2d 611 (1983), this Court held that state hunting and fishing laws were pre-empted on the reservation of the Mescalero Apache Tribe. The tribe, in conjunction with the federal government, had implemented a comprehensive fish and game management program. The government operated a fish hatchery, stocked artificial lakes with fish, donated a herd of elk, and assisted the tribe in formulating hunting and fishing ordinances which were subject to approval by the Secretary of the Interior. The tribe's authority to regulate fish and game pre-empted the state's jurisdiction because concurrent state

jurisdiction would: (1) nullify tribal authority; (2) thwart the comprehensive management scheme established by the tribe with the participation in conjunction with the government; (3) disrupt the tribe's ability to conduct a sound management program; and (4) contravene Congress' objective of promoting tribal self-government and economic development. 462 U.S. at 338-41, 103 S.Ct. at 2388-90. None of these elements are present in this case.

The record is devoid of any evidence that Northway, Inc. or the Native Village of Northway have developed and implemented any game management scheme, comprehensive or otherwise.[3] No such scheme exists in or around Northway. Moreover, there is no evidence that they have done anything in the exercise of tribal authority over fish and game. Here, in contrast to *Mescalero*, there is no tribal authority that would be nullified, no management scheme that would be thwarted, and no Congressional purpose that would be contravened by enforcement of state law against this defendant.

The conclusion that the state can exercise its jurisdiction in this case finds additional support in the Ninth Circuit Court of Appeals' decision in *United States v. Sanford*, 547 F.2d 1085 (9th Cir. 1976). The court there held that state game laws could be applied to the

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[3] Similarly, Scott's reliance on *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 107 S.Ct. 1083, 94 L.Ed.2d (1987), is somewhat misplaced. (*See* Pet. Br. at 12 note 8) The absence of a tribal regulatory scheme also distinguishes Scott's case from *Cabazon*. Apart from the fact that the *Cabazon* Court was dealing with activities on a reservation, it held that state laws regarding gambling could not apply within reservations where the tribes had enacted federally approved ordinances authorizing gambling. The Court may well have reached a different result if the issue before it had been the enforcement of state gambling regulation against a non-Indian in the absence of any tribal ordinances.

activities of non-Indians on an Indian reservation where such application was not precluded by federal law and it would not interfere with tribal self-government on the reservation. *Id.* at 1089 (quoting *State ex rel. Nepstad v. Danielson*, 427 P.2d 689, 692-93 (Mont. 1967)). Scott has cited no federal law precluding enforcement of state law in his case and has never argued, either here or below, that application of state law to him would interfere with tribal self-government.

Reduced to its essence, the recognition of an exclusive Native sovereign right to regulate hunting in this instance would effectively create a regulatory vacuum in the Village of Northway where no law regulating the hunting would exist. *Mescalero* should not be applied in this vacuum. The direct result of sovereign recognition *in this case* would be the creation of an enclave where there is no regulation of hunting whatsoever. Consequently, even if the Village of Northway is deemed sovereign power over hunting on village corporation land, the State of Alaska should be deemed to have concurrent jurisdiction until the village develops and implements its own game management and regulatory scheme.

Scott also claims that "P.L. 280 specifically confirms the power of tribes to regulate on-reservation hunting and fishing." (Pet. Br. at 12) Presumably, he is referring to 18 U.S.C. § 1162(b) which provides that state jurisdiction over criminal matters involving Indians or taking place in Indian Country may not "deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity *afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.*" (Emphasis added.) Scott fails to explain how enforcement of state law

against him deprives the Northway Natives of any right, privilege, or immunity afforded under a federal treaty, agreement, or statute. The state is not aware of any such law.

CONCLUSION

Scott has not presented an adequate basis upon which this Court should exercise its power of discretionary review. Accordingly, his petition should be denied.

Respectfully submitted this 6th day of July, 1994.

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:
Kenneth M. Rosenstein
Assistant Attorney General

Counsel for Respondent

THE DISTRICT COURT FOR THE STATE OF ALASKA

FOR THE FOURTH JUDICIAL DISTRICT

STATE OF ALASKA,	)
	)
Plaintiff,	)
	)
vs.	)
	)
JEFFREY D. SCOTT,	)
	)
Defendant.	)
	)

Case No. 4TO-S92-83 CR

MOTION TO DISMISS
(Filed Aug. 10, 1992)

COMES NOW the defendant, Jeffrey D. Scott, by and through his attorney, Sheri L. Donaldson, and hereby moves this Court to dismiss the action for lack of State jurisdiction. This motion is supported by the following memorandum.

DATED at Fairbanks, Alaska this 10th day of August, 1992.

TANANA CHIEFS CONFERENCE, INC.

/s/ Sheri L. Donaldson
Sheri L. Donaldson
Attorney for Mr. Scott

THE DISTRICT COURT FOR THE STATE OF ALASKA

FOR THE FOURTH JUDICIAL DISTRICT AT TOK

STATE OF ALASKA,)
)
Plaintiff,)
)
vs.)
)
JEFFREY D. SCOTT,)
)
Defendant.)
)

Case No. 4TO-S92-83 CR

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS
INTRODUCTION
(filed Aug. 11, 1992)

The defendant moves for dismissal of the complaint in this case for the reason that the State has no jurisdiction to prosecute; and the State Court has no jurisdiction.

STATEMENT OF FACTS

Based upon the complaint and police report filed in this case, the defendant is alleged to have illegally possessed a bull moose during a closed season under 5 A.A.C. 92.140(a). (See Exhibit A). According to the complaint and police report, a moose is alleged to have been shot by Lavelle Jimmie, an Athabascan Indian from Northway, on May 8, 1992. (See Exhibit B and C). According to the police report by Trooper Thorsrud of the Alaska State Troopers in Tok, Lavelle Jimmie shot the moose because it was limping. According to a taped conversation between Lavelle Jimmie and Trooper Thorsrud, the moose was shot by Lavelle because it had a broken leg. (See Exhibit D. Tape Transcript between Trooper Thorsrud and Lavelle Jimmie).

The trooper never asked any of the suspects where the moose was shot. There is evidence that the moose was shot in the Tetlin Wildlife Refuge, on federal land.

Interestingly enough, the complainant State Trooper, Trooper Thorsrud, did not even report this "illegal moose kill" to federal Fish and Wildlife officials located at the Tetlin Wildlife Refuge, according to federal Fish and Wildlife officer Bob Schultz at the refuge.

The moose was shot on the north bank of the Nabesna River upriver from the Native Village of Northway, located approximately 250 miles away from Fairbanks. The location of the alleged harvest is on land which has been interim conveyed to the Northway Native, Inc. (Village corporation for Northway). (See Exhibit E). The interim conveyance of the tract (designated I.C 964) was made pursuant to the Alaska Native Claims Settlement Act, P.L. 92-203, Section 12. (See Exhibit F). Interim Conveyance 964, November 9, 1984, conveys only surface rights to the village corporation. Sub-surface rights for the same tract was conveyed to Doyon Regional Corporation pursuant to Interim Conveyance 965. (See Exhibit G).

The historic ancestors of the native village of Northway are confirmed by the presence of Upper Tanana Athabascan peoples residing on the Chisana and Nabesna drainages at the time of direct white contact in the 1880s. Martha F. Case, Wild Resource Use in Northway, Alaska, Published by the Alaska Department of Fish and Game, Division of Subsistence, June 1986, page 14. In the 1920s, the Old Nabesna camp on the east bank of the Nabesna River had reportedly been in use for two generations by members of the Old Nabesna band. Id. at page 19. The Old Nabesna band inhabited the lower Chisana River from Gardiner Creek to its mouth, and the lower Nabesna River from approximately the Cheslina River to the mouth, and the confluence of the two rivers and the beginning of the Tanana River. Id. at page 24.

Members of this band travelled northward to the upper Ladue drainage, and utilized the lakes and streams south to the Black Hills east of the Nabesna River. Id. This constitutes an area approximately 50 miles north-south and 25-30 miles east-west. Id. Two camps on the Nabesna River, called Nabesna Village or Old Nabesna, and Dry Creek, as well as several fish camps in the lower Nabesna and Chisana river area were occupied by this bank in the mid-20th century. Id.

Several trading posts were managed in the area, beginning in 1909 and 1910 with excursions by a Captain Northway from Fairbanks to the lower Nabesna River. Id. at page 16. Four posts were located over the years near a camp site of the lower Nabesna River people near the present community of Northway. Id. In the early 1940s the Old Nabesna settlement moved to its present location aong [sic] the east bank of the Nabesna River to avoid river erosion. Id. at page 17. The Alaska Highway along the northern edge of the valley was completed in 1942, and an airstrip was constructed approximately seven miles south of the highway, and two miles from the Nabesna village. Id. A graded road connected the airstrip and village to the highway. Id. A post office was established in 1941, and the village name was changed to Northway. Id. The population grew from approximately 100 residents in the early 1940s to over 300 by 1980. Id. A 1984 study of Northway households by

ethnicity shows that 97% of the members of Northway Village are Alaska natives. Id. at page 35.

Contemporary hunting areas for residents of the Native Village of Northway fall within former band territories, the descendants of which comprise a large portion of the current local hunting population. Id. at page 59. Northway residents harvested an estimated total of 90,091 edible pounds of wild resources between June 1987 and May 1988. Marcotte, James R., Wild Fish and Game Harvest and Use by Residents of Five Upper Tanana Communities, Published by the Alaska Department of Fish and Game, Division of Subsistence, December 1991, page 121. Moose hunting was the second largest contributor comprising 26.8 percent of the harvest, with whitefish harvest the highest harvest. Id.

Athabascan is a linguistic family which includes Indians from Alaska, across Canada and extending down to the Mexico border. See John R. Swann, Indian Tribes of Alaska and Canada, A Reprint of a Portion of "The Indian Tribes of North America" first published in Washington, D.C., 1952.

The governmental organization of these semi-nomadic Indian tribes was not a complicated one. Each tribe was headed by an elected chief who had only as much authority as the individuals were willing to grant him. Handbook of North American Indians, Subarctic. W.C. Sturtevant, J. Helm, Eds., at pg. 598.

The Athabascans of interior Alaska populated the region since prior to the coming of the Russians in 1843. The Indians of the Interior were the last to come into contact with white men. When non-Natives entered the Interior of alaska, they came first to trade and later, generally, to exploit the natural resources of the indigenous peoples' territories. At first, the traders located their trading posts in or near the Natives' semi-permanent settlements or ceremonial meetings places. Later, the trading posts were placed at a distance from the Native Villages as the clash of cultural expectations between the Indians and the traders made the traders uncomfortable in close proximity of the Indians. See Compilation of Narratives of Explorations in Alaska, Washington Government Printing Office, 1900, Schwatka, pp. 341, 343; Raymond, pp. 36-37; Clarence C. Hulley, Alaska: Past and Present, Binfords & Mort, Publishers, Portland, Oregon, 1958 at pg. 27; 222-229.

After the arrival of the explorer and trader, the church came soon after, and then the miner. Alaska Past and Present, Id. at pp. 222-229. For the most part, the explorer and the miner were transients, leaving for new discoveries, new strikes, and new territories. There remained the trader, the church and the Tribes.

STATEMENT OF LAW

Unless Congress has expressly ceded its authority, a State is without authority to manage hunting and fishing in "Indian Country." New Mexico v. Mescalero Apache Tribe, 462 U.S. 324 (1983).

In Native Village of Tyonek v. Puckett et. al., pg. 346, (9th Cir. No. 87-3569, Jan. 13, 1992), the court held that the native Village of Tyonek qualified for sovereign immunity, and that its officers were also protected from liability based on derivative sovereign immunity for enforcement of a village ordinance requiring the eviction of non-tribal members from village territory. The Court stated that the village was under the superintendence of the federal government. Id. at 354. This test is met when the Government treats Indians as a "dependent people" requiring government superintendence, regulation, and protection. Id. The Court had previously held that Alaska Natives "have been considered to have the same status as other federally recognized American Indians . . .they are under the guardianship of the federal government and entitled to the benefits of the special relationship." Id. In addition, although the village holds its land in fee simple, the government has continued to regulate the affairs of Alaska Natives by passing legislation to protect their welfare and lands. Id.; See Alaska National Interest Lands Conservation Act, 16 U.S.C. 3111(4); Indian Child Welfare Act, 25 U.S.C. 1901(2) & (3). The record also demonstrated that the village received assistance from various government agencies which provided the village with federal services and funds such as educational and housing grants. Id. at 355. This involvement by the government recognized the village's continuing dependence on federal help and involvement and fulfilled the Indian Country test. Id.

The Court in Tyonek held that ANSCA corporations may be considered "Indian Country". Id. at 354. The Court invoked the test articulated in Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe of Oklahoma, 111 S.Ct. 905, 910 (1991), which held that Indian Country comprises lands which have been set apart for use of the Indians "under the superintendence of the government".

On March 16, 1992 the Ninth Circuit Court of Appeals issued a new opinion, and withdrew their January 13, 1992 opinion. In that opinion, the Court stated that they had not addressed the question previously whether any Alaskan native village constituted an Indian tribe for the purpose of sovereign immunity. See Native Village of Tyonek v. Puckett, et. al., No. 87-3569, pg. 9 (9th Cir. March 16, 1992). The Court stated that the District Court had failed to enter express findings of facts or develop a record to support its conclusion that the Native Village of Tyonek is an Indian tribe protected by sovereign immunity. Id. Accordingly, the Court remanded to the District Court so that an adequate

record could be prepared so that they could review this complex factual question. Id.; Native Village of Venetie, 856 F.2d 1384 (9th Cir. 1988).

LEGAL ARGUMENT

In this case, it is clear that the land where the moose was shot was located on "Indian Country", within the jurisdiction of the Native Village of Northway. The land in question was undeveloped subject to restrictions on the title, created by federal statute. Consequently, the land is exempt from adverse possession, real property taxes, execution to satisfy debts, and alienation through bankruptcy. 43 U.S.C. Section 1636. This statutory scheme clearly establishes a protective relationship between the tribe and the federal government.

There is also ample evidence that the village receives federal assistance for education, housing, native health funds for clinics, prevention programs, safe drinking water and sanitation; Indian family and social service programs; protection of wildlife on lands owned by tribes or ANSCA corporations; and programs for employment of Indians. See Affidavits of Reva Shircel, Exhibit H; Don Shircel, Exhibit I; Al Ketzler, Sr., Exhibit J.

The defendant and the other residents of the Native Village of Northway live within this scheme of federal protection, and the lands held by Northway Natives, Inc. are an integral part of the federal government's protective relationship to the Native Village. The land is inseparable from the overall relationship existing between the federal government and the residents of the native village. As reflected by the federal government's regulation and legislation for the benefit of the Native Village of Northway and other native villages, the federal government exists as a benevolent overseer and protector of the Native Village of Northway and its residences.

In conclusion, it is clear that the Village corporation lands are "Indian Country", and the State of Alaska is without jurisdiction to regulate an manage fish and wildlife thereon.

For the foregoing reasons the complaint and action against the defendant should be dismissed for want of jurisdiction.

DATED this 11th day of August, 1992 in Fairbanks, Alaska.

TANANA CHIEFS CONFERENCE, INC.

/s/ Sheri L. Donaldson
Sheri L. Donaldson
Attorney for Mr. Scott

THE DISTRICT COURT FOR THE STATE OF ALASKA

FOR THE FOURTH JUDICIAL DISTRICT AT TOK

STATE OF ALASKA,	)
	)
Plaintiff,	)
	)
vs.	)
	)
JEFFREY D. SCOTT,	)
	)
Defendant.	)
	)

Case No. 4TO-S92-83 CR

AFFIDAVIT OF REVA SHIRCEL

State of Alaska	)
	) ss.
Fourth Judicial District	)

REVA SHIRCEL, being duly sworn, upon oath, deposes and states as follows:

1. That I am the Director of Education for Tanana Chiefs Conference, Inc.;

2. That Tanana Chiefs Conference, Inc. is a non-profit corporation organized under the laws of the State of Alaska and is a "tribal organization" as defined by the Indian Self Determination Act, P.L. 93-638, Section 4(c);

3. That as a tribal organization TCC is eligible under section 102 of the Act to enter into contracts with the Departments of the Interior, Health, Education and Welfare, for the administration of programs established under federal law for the benefit of Indians;

4. That my job as Director of Education I am in a position to know about federal grants and programs for Indian Education which affect the native villages in the TCC region;

5. That in the fiscal year 92, approximately $10,895 was received for the Northway school from the federal Johnson O'Malley program for cultural heritage activities for elementary and secondary school Indian children.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 11th day of August, 1992 at Fairbanks, Alaska.

/s/ Reva Shircel
Reva Shircel

SUBSCRIBED AND SWORN TO before me this 11th day of August, 1992 at Fairbanks, Alaska.

/s/ Gloria J. Weltman
Notary Public in and for the State of Alaska
My Commission Expires on: 8/29/95

THE DISTRICT COURT FOR THE STATE OF ALASKA

FOR THE FOURTH JUDICIAL DISTRICT AT TOK

STATE OF ALASKA,)
)
Plaintiff,)
)
vs.)
)
JEFFREY D. SCOTT,)
)
Defendant.)
)

Case No. 4TO-S92-83 CR

AFFIDAVIT OF DON SHIRCEL

State of Alaska)
) ss.
Fourth Judicial District)

Don Shircel, being duly sworn, upon oath, deposes and states as follows:

1. That I am the Director of Family Services for Tanana Chiefs Conference, Inc.;

2. That Tanana Chiefs Conference, Inc. is a non-profit corporation organized under the laws of the State of Alaska and is a "tribal organization" as defined by the Indian Self Determination Act, P.L. 93-638, Section 4(c);

3. That as a tribal organization TCC is eligible under section 102 of the Act to enter into contracts with the Departments of the Interior, Health, Education and Welfare, for the administration of programs established under federal law for the benefit of Indians;

4. That in my job as Director of Family Services I am in a position to know about federal grants and programs for Indian Family Services which affect the native villages in the TCC region;

5. That in fiscal year 92, approximately $13,860 was received for the Native Village of Northway for the low-income Home Energy Assistance Program;

6. That 32 villages of the TCC service area, including Northway, shared on a pro rata basis in a fiscal year 92 appropriation of

$85,000. from the Indian Child Welfare Act grant filed by TCC on their behalf as a federally-recognized tribe.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 11th day of August, 1992 at Fairbanks, Alaska.

/s/ Don Shircel
Don Shircel

SUBSCRIBED AND SWORN TO before me this 11th day of August, 1992 at Fairbanks, Alaska.

/s/ Susan Paskvan
Notary Public in and for Alaska
My Commission Expires on: 9/27/93

THE DISTRICT COURT FOR THE STATE OF ALASKA

FOR THE FOURTH JUDICIAL DISTRICT AT TOK

STATE OF ALASKA,)
)
Plaintiff,)
)
vs.)
)
JEFFREY D. SCOTT,)
)
Defendant.)
)

Case No. 4TO-S92-83 CR

AFFIDAVIT OF AL KETZLER, SR.

State of Alaska)
) ss.
Fourth Judicial District)

Al Ketzler, Sr., being duly sworn, upon oath, deposes and states as follows:

1. That I am the Chief Administrative Officer for Tanana Chiefs Conference, Inc., (TCC);

2. That Tanana Chiefs Conference, Inc. is a non-profit corporation organized under the laws of the State of Alaska and is a "tribal organization" as defined by the Indian Self Determination Act, P.L. 93-638, Section 4(c);

3. That as a tribal organization TCC is eligible under section 102 of the Act to enter into contracts with the Departments of the Interior, Health, Education and Welfare, for the administration of programs established under federal law for the benefit of Indians;

4. That in my job as Chief Administrative Officer I am in a position to know about federal grants and programs which affect the native villages in the TCC region;

5. That as an Indian Tribe recognized under federal law, the Native Village of Northway is figured into funding formulas and shares in the benefits of federal programs and grants intended to benefit Indians;

6. That these programs and grants have included, but are not limited to:

(a) Administration for Native Americans for assistance in rural economic development and preparation of a model code for tribal courts, (1989-1991);

(b) Bureau of Indian Affairs contracts for the management of employment, health services, social services, housing, education, forestry, tribal operations, agriculture, wildlife and parks, and realty;

(c) Indian Child Welfare grants from the BIA, which grants are intended to provide counseling coordination and support to Native families;

(d) The Intertribal Agriculture Council;

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 11th day of August, 1992 at Fairbanks, Alaska.

/s/ Al Ketzler, Sr.
Al Ketzler, Sr.

SUBSCRIBED AND SWORN TO before me this 11th day of August, 1992 at Fairbanks, Alaska.

/s/ Perry R. [illegible]
Perry R. [?]
Notary Public in and for the State of Alaska
My Commission Expires on: 6/1/96

Supreme Court, U.S.
FILED
AUG 15 1994
OFFICE OF THE CLERK

(3)

No. 93-1690

In The

Supreme Court of the United States

October Term, 1994

JEFFERY D. SCOTT,

Petitioner,

v.

STATE OF ALASKA,

Respondent.

On Petition For Writ Of Certiorari
To The Supreme Court of Alaska

MEMORANDUM IN REPLY TO OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

SHERI L. HAZELTINE
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8 pp

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SUMMARY

The State's Opposition to Mr. Scott's Petition for Certiorari is satiated with misrepresentations which he is now forced to correct by means of this Reply.[1] The State's arguments in its opposition are founded primarily on its contention that the trial court judge ruled against Scott based upon Scott's failure to introduce sufficient factual evidence at the evidentiary hearing on October 2, 1992 on Scott's motion. In truth, the lower court judge was clear on the record that his decision was based, as a matter of law, upon *Native Village of Stevens v. Alaska Management & Planning,* 757 P.2d 32 (Alaska 1988) and that he was not making any factual findings in reaching his conclusion. It was not necessary to make any factual findings. As proof of the lower court's statements a copy of the tape from the trial court evidentiary hearing is enclosed as Appendix A.

The State acknowledges the irreconcilable conflict of law between the Ninth Circuit in *Native Village of Venetie I.R.A. Council v. Alaska,* 944 F.2d 548 (9th Cir. 1991) and the Alaska Supreme Court in this case. The State does not suggest that this entrenched conflict can be resolved in any way other than review by this Court. Instead, the State avoids resolution of this basic conflict in law by raising a series of issues that were not addressed by the lower trial court nor were raised by Scott in this Petition for Certiorari.

Also, Scott's presentation of additional authority to this Court regarding Department of Interior executive action should be allowed, despite the State's flawed claim that it

---

[1] The State's errors can perhaps be forgiven in light of the fact that this case was just recently assigned to Mr. Rosenstein in Anchorage with the State Office of Special Prosecutions and Appeals. Mr. Rosenstein did not participate in any capacity in any of the lower court proceedings. He was not present at the evidentiary hearing in Scott's case. On May 17, 1994 the State filed a letter with this Court stating that they waived the right to file an opposition brief to Mr. Scott's Petition for Certiorari. On June 7, 1994 this Court sent a letter back to the State requesting that a response be filed to this Petition, even though the State had waived the right to file a response. The State's case was then assigned to Mr. Rosenstein to write the response brief in light of this Court's request.

should be stricken. This additional authority was not available for the trial court's perusal because the action occurred on October 15, 1993. This information was supplied, though, to the Alaska Supreme Court in Scott's Petition for Hearing dated December 9, 1993.

Finally, the State's claim that the recognition of Native sovereignty in this case would create a regulatory vacuum is plainly wrong. As Scott has explained repeatedly from the start of these proceedings, Northway tribal law governs the hunting and fishing activities of persons on this particular piece of Indian Country. The factual and legal nature of Northway's tribal law was never explored at the evidentiary hearing because the court did not consider it necessary to reach those issues in light of his preliminary legal decision.

ARGUMENT

I. SCOTT IS ASKING THIS COURT TO CONSIDER EXECUTIVE ACTION THAT TOOK PLACE ON OCTOBER 15, 1993 AND WHICH WAS PRESENTED TO THE ALASKA SUPREME COURT AS ADDITIONAL AUTHORITY IN SCOTT'S PETITION FOR HEARING DATED DECEMBER 9, 1993.

The States claims that this Court should not consider the Department of Interior's executive action (a federal regulation) dated October 15, 1993 which listed federally acknowledged Indian tribes (including the Native Village of Northway). *Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs,* (to be codified pursuant to 25 C.F.R. Part 83. Oct. 15, 1993). The State feels that this federal regulation was a "document" or "exhibit" which was not filed in the trial court and is therefore inadmissible. It cites *United States v. Sanga* as authority for this position. The State also claims that Alaska Rules of Criminal Procedure 35.1(a)(2) is instead the proper procedural forum for Scott to introduce this new regulation.

The State is clearly wrong. *United States v. Sanga,* 967 F.2d 1332, 1336 (9th Cir. 1992) concerned factual exhibits

and documents (evidence) introduced at the appellate level that were not previously admitted in the trial court. Scott's introduction of a copy of the federal regulation was first made in connection with his Petition for Hearing dated December 9, 1993 in front of the Alaska Supreme Court. Simply attaching a copy of a federal regulation as an exhibit to an appellate pleading does not prohibit the re-introduction of this federal regulation as part of Scott's Petition for Certiorari. The State should not be able to argue that Scott is prohibited from providing additional legal authority on appeal. Federal Rule of Appellate Procedure (FRAP) 10 concerns the *evidentiary record* on appeal and not the citation of additional legal authority.

Finally, the State claims that Alaska Criminal Rule of Procedure 35.1(a)(2) is instead the proper avenue to present this federal regulation. Rule 35.1(a) is a post-conviction procedure available to criminal defendants and is normally used when there is newly discovered evidence subsequent to the trial and conviction. *Hensel v. State,* 604 P.2d 222 (Alaska 1979). 35.1(a)(2) governs the jurisdiction of the trial court to impose sentence. Here, Scott was convicted before the trial court after he entered a plea of no contest to the charge. The plea was only entered upon the condition that Scott be allowed to reserve the legal issues he contested in his motions in order to appeal these issues to a higher court.

Rule 35.1 is also clear in stating that this remedy is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction. Rule 35.1(b).

It is clear that contrary to the State's claim, Rule 35.1(a)(2) does not provide a remedy to Scott on the legal issues now before this Court if his Petition is denied. The provisions of this rule are very narrow and the legal issues he raises on appeal have already been raised to the trial court and denied.

The State does not argue that a party is prohibited from citing new legal authority at the appellate level which was not cited at the trial court level. The State has done this itself by

citing new legal authority at this level not cited at the trial court.[2]

II. THE RECORD IS CLEAR THAT THE TRIAL COURT RULED AGAINST SCOTT PURSUANT TO *NATIVE VILLAGE OF STEVENS* THAT THE NATIVE VILLAGE OF NORTHWAY IS NOT AN INDIAN TRIBE, AS A MATTER OF LAW.

The State claims that the trial court may have ruled differently for Scott if he had produced sufficient factual evidence at the evidentiary hearing. The State also erroneously asserts that Scott presented no evidence that the Native Village of Northway is a sovereign Indian tribe. Neither of these statements are true.

It is clear from the record from the October 2, 1992 evidentiary hearing that the trial court instead assumed the truth of all of the facts asserted by Scott in his motion, affidavits, exhibits and reply, and ruled against Scott as a matter of law based upon *Native Village of Stevens v. Alaska Mgmt. & Planning*, 757 P.2d 32 (Alaska 1988). In order to address this issue that the State has raised. Scott requested a court copy of the tape from the proceeding and has enclosed this copy with his Reply brief as Appendix A.

A transcription of the dialogue that occurred at the proceeding on October 2, 1992 between the Honorable District Court Judge Charles Pengilly, Attorney Sheri (Donaldson) Hazeltine for Jeffery Scott, and Assistant District Attorney Jeff O'Bryant follows at Tape 4FA3-1549, log 2228 – 2565 (Appendix A). The discussion that follows occurred at the beginning of the evidentiary hearing, and concerned the Scott's motion to dismiss based upon lack of State jurisdiction, the subject of this Petition. (Scott had also filed four other motions, none of which are the subject of this Petition.) No testimony from any witnesses had been presented yet, and this discussion followed:

---

[2] *Cohen v. United States; State ex rel Nepstad v. Danielson; United States v. Sanga.*

Judge Pengilly: "I don't see any way to reconcile your position with *Stevens Village,* do you?"

Miss Donaldson: "Your Honor, this court is not bound by *Stevens.*"

Judge Pengilly: "We have a fundamental disagreement then. I think that Alaska Supreme Court is controlling authority, and that I don't have the discretion to deviate from holding in *Stevens Village.* To the extent that it conflicts with federal law, um, federal law that is short of the United States Supreme Court, I'm bound by the Alaska Supreme Court decisions rather than the Ninth Circuit decisions (inaudible). What I'd suggest we do is, is simply consider your statement of facts in that motion as being an offer of proof. And simply assume that all of those assertions are true for purposes of this motion, and, uh, even on those assumptions I think *Stevens Village* is controlling and compels me to rule against you on that issue. I don't know how you could make a better record, than to simply assume all those assertions are true. But if you want to go ahead."

Miss Donaldson: "Well, no, that's fine, your Honor, um, we did ask, I did call the State the other day and ask if he would stipulate to the facts contained in my motion and affidavits because we do intent to appeal, if we do lose on that, but, um, we are concerned about making a good record. I think this is sufficient at this time."

Judge Pengilly: "Mr. O'Bryant, any objection from the State?"

Mr. O'Bryant: "No your Honor, that's fine."

Judge Pengilly: "Okay."

Mr. O'Bryant: "I just ask leave, um . . . I know this court doesn't want this five-motion hearing to be a day long event."

Judge Pengilly: "I got all morning to reserve, it can at least be a morning-long event."

Mr. O'Bryant: "Um, I guess I would like leave of the court, at some point in time, to possibly supplement the record, uh, with respect to that issue. I'm not sure exactly how. But I'm not uh, I guess I'm willing to stipulate that what's there is there, and it can be part of the record. Without having people come in and testify. With respect to everybody but the defendant. I mean, there's an allegation of this is where it took place. Well, I think we should hear from the defendant on that. Um . . . but if, in the course of the process of the appellate procedure, pre-appellate procedure, it

becomes evident that there's additional facts that are germane to the State's, um, position, as far as this court having jurisdiction, I'd like an opportunity uh, to be able to come back here and supplement the record. I know I'm not saying this very well . . . "

Judge Pengilly: "I don't even understand what you're requesting."

Mr. O'Bryant: "Um. I guess at this time I'm not prepared to rebut that issue. I don't have any contra evidence, if you will, other than, the state of the law, as the judge has indicated, as you have indicated. Factually, though, I might want to put on some additional facts, uh, to, if you will, or counter facts."

Judge Pengilly: "The thing is, I'm not making any factual findings at all, and I don't think its necessary here. My position is that, as a matter of law, even assuming that everything the defense has presented is accurate and all those factual assertions are true, *Stevens Village* compels a ruling against them. So, I think in the absence of any fact-finding by this court on this issue, there's not any need for you to supplement the record. So and unless and until I get reversed at which time we would have to have a full-blown evidentiary hearing."

Mr. O'Bryant: "Okay. I'll just do this. My concern is, for somebody to to determine whether this court is correct, they're gonna look at the record that's here. And the only thing on the record is the facts presented by the Defense through affidavit. Uh, and I haven't, I'm not saying, I'm basically willing to stipulate to those facts."

Judge Pengilly: "I'm not asking you to stipulate."

Mr. O'Bryant: "Oh, okay, alright."

Judge Pengilly: "Yeah, you know, the point I need to make here is that no factual conclusions are being made at all. You're not being understood to have stipulated to anything. And I'm resisting your suggestion that I should leave evidence open in this case because then they're gonna want to present responsive evidence to whatever you present and I'd rather avoid that sort of a situation."

Mr. O'Bryant: "Okay. Just as long as, I'm not, the State's not bound."

Judge Pengilly: "No. No, let's be clear. There's no stipulation here. In fact, there is no finding of fact of any kind."

Mr. O'Bryant: "Okay. Purely legal ruling. Alright. Thank you."

Miss Donaldson: "Your honor, how can we make a record then if there's no record?

Judge Pengilly: "There is a record. The record is that, every factual assertion that's contained in your documents is being assumed, for purposes of this hearing, to be true. And my ruling is, even on that assumption, the laws is against you. You know, I'm not making a finding that all those statements are true, it's a conditional finding. Even if they're true, you still lose. Okay? So, you know, as I said before, I think that's the best of all possible records from your point of view, but, uh, in any event, I hope that much is clear and we can move on to the other motions.

Miss Donaldson, have you got any preference as to how we're gonna proceed from here? There are still four left."

Miss Donaldson: "I would just suggest that we just get started with the testimony of the trooper."

Testimony was then taken from the trooper, Mr. Scott, and a witness of Mr. Scott's (Oscar Jimmie) in connection with the other four motions. Also, at the hearing, Mr. Scott provided extensive testimony and a map pointing out where the moose was shot, contrary to the State's claim.

It is clear from the trial court's comments at the evidentiary hearing that his ruling was purely legal, and that he was not making any factual findings. The court even stated that "so and unless and until I get reversed at which time we would have to have a full-blown evidentiary hearing."

Also, the State has provided a very incomplete copy of Scott's motion to dismiss attached as appendices to its Opposition to the Petition for Certiorari. (*See* State's Appendix A2-A13 in the Brief in Opposition to the Petition for Certiorari). The State left out sixteen (16) pages that included a copy of the summones (Exhibit A of Scott's Motion to Dismiss), the criminal complaint (Exhibit B), the police report (Exhibit C), a transcript of the interrogation of Scott by troopers (Exhibit D), a map showing where the moose was shot on Northway Native Incorporated land (Exhibit E), a copy of the ANSCA Interim Conveyance of the property to Northway Natives Inc. (Exhibit F & G). For clarification, Scott has attached complete copies of his Motion to Dismiss, the State's Opposition to the Motion, and Scott's Reply in the Appendix. (*See* Appendix B, C, & D of this Reply).

Contrary to the State's argument that no facts were presented to the trial court concerning the Native Village of Northway's status as an Indian tribe, Scott presented this evidence in his Motion to Dismiss, his Reply, and in Affidavits from Reva Shircel, Don Shircel, and Al Ketzler, Sr. He was also prepared to present this evidence in the form of witnesses at the evidentiary hearing.

All of the above points to the Alaska Supreme Court's decision in *Native Village of Stevens* and in this case that no factual inquiry is required to determine whether an Alaska Native village has tribal status. In *Native Village of Stevens v. A.M.P.*, 757 P.2d 32, 40 (Alaska 1988), the court inexplicably finds that the power of local government (tribal sovereignty) cannot be extended to the Native village because it is not a "reservation". This conclusion flies in the face of federal Indian law which accords tribal sovereign powers to an Indian tribe in Indian Country, and which states that these powers are not extinguished or terminated unless there is a clear Congressional intent to do so. A reservation is clearly only one type of "Indian Country".

The Alaska Supreme Court's legal ruling is in direct conflict with the Ninth Circuit's ruling in *Native Village of Venetie* which holds that Alaska Native village sovereignty exists unless and until affirmatively divested by Congress. According to the Ninth Circuit, an express factual finding must be made to determine whether a village is an Indian tribe which is the modern-day successor to a sovereign historical band of Natives. These conflicting decisions are only resolvable by this Court.

III. The Native Village of Northway Retains its Inherent Tribal Sovereign Authority to Manage Hunting in Indian Country.

The State also claims that as a purely legal matter Congress divested the village of whatever sovereign control over game resources it might have had. *See* Opposition to Petition for Certiorari, page 5 and 6. It cites as authority Section 4(b) of ANSCA.

Scott does not disagree that ANSCA extinguished aboriginal hunting rights on land where Indian property titles were extinguished. But it is Scott's position that ANSCA did not extinguish aboriginal hunting rights on Native corporation lands.[3]

The State also cites several cases as support for its position that ANSCA extinguished aboriginal hunting rights in Alaska. These cases can be distinguished from Scott's case. This Court in *Amoco Production Co. v. Gambell*, 480 U.S. 531, 94 L.Ed.2d 542, 562, 107 S.Ct. 1396 (1987) held that it did not decide the scope of ANSCA Sec. 4(b), but instead reversed the Ninth Circuit on other grounds. *United States v. Atlantic Richfield*, 612 F.2d 1132 (9th Cir. 1980) involved trespass claims on Native land, and did not concern the extinguishment of fishing rights of Alaska Natives on Native-owned lands. In *Menominee Tribe of Indians v. U.S.*, 391 U.S. 404, 20 L.Ed.2d 697, 703, 88 S.Ct. 1705 (1968) the Court declined to

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[3] *See Hackla v. Atxam, Corp.*, 753 P.2d 1144, 1147 (Alaska 1988) (ambiguities in ANSCA, as in other federal statutes for the benefit of the Indians, are to be construed in favor of the Indians.) Tribal status and governmental powers survive the termination of a reservation unless clearly and unequivocally extinguished by Congress. *United States v. Santa Fe Pacific R.R.*, 314 U.S. 339, 353, (1941); *Decoteau v. District County Court*, 420 U.S. 425, 442-44 (1975); *Menominee Tribe of Indians v. United States*, 391 U.S. 404 (1968); *Kimball v. Callahan*, 590 F.2d 768, 776-77 (9th Cir.), *cert. den.* 444 U.S. 826 (1979). Federal courts have ruled that this principle applies equally to ANSCA villages. *See Chilkat Indian Village v. Johnson*, No. J84-024 Civ. (D. Alaska, Oct. 9, 1990) (if Chilkat had governmental power under its status as a reservation ANSCA did nothing to extinguish those powers); *Native Village of Tyonek v. Puckett*, 890 F.2d 1054 (9th Cir. 1989) (ANSCA did not abrogate Tyonek's tribal sovereign immunity); *Blatchford v. Native Village of Noatak and Circle Village*, 111 S.Ct. 2578, 115 L.Ed.2d 686 (1991) (ANSCA constitutes Congressional recognition of Native villages as Indian tribes).

The federal government's special relationship with Alaska Natives to facilitate the goals of self-determination is evidenced by the fact that ANSCA villages have been recognized in virtually all modern Indian legislation enacted since 1971. *See* 25 U.S.C. Sec. 450a(b), 450b(e), 25 U.S.C. Sec. 1901 *et seq.*, 25 U.S.C. Sec. 1451, 1452(c), 31 U.S.C. Sec. 7102, 26 U.S.C. Sec. 7701(40), 7871.

Although all Indian reserves except one in Alaska were revoked under ANSCA, no attempt was made under the statute to limit the authority of the Native villages, either the many villages that had organized pursuant to the IRA or those that had governed according to their inherent tribal authority. *Getches & Wilkinson*, Federal Indian Law, pg. 778 (West 1986).

hold that the Termination Act was a backhanded way of abrogating the hunting and fishing rights of the Indians. The intention to abrogate or modify a treaty is not to be lightly imputed to the Congress. *Id.*

Also, as Scott has previously stated, there is no law enforcement vacuum at present on these Indian Country lands because tribal law currently governs. The State erroneously contends that the tribe has no tribal law governing these lands. Currently the State is interfering with the tribe's regulation of hunting on its lands and Scott has repeatedly argued this at the lower court levels, contrary to the State's assertion that he has not argued this. *See Scott's Motion to Dismiss for Lack of State Jurisdiction,* Appendix B and *Reply,* Appendix D.

CONCLUSION

It is clear that Scott has presented ample basis upon which this Court should exercise its power of discretionary review. The direct and continuing conflict in law between the Alaska Supreme Court and the Ninth Circuit are only resolvable by this Court. This matter will continue to arise as long as the Alaska State Courts hold that Alaska Native villages are not Indian tribes as a matter of law.

For the foregoing reasons, the Alaska Supreme Court's decision should be reviewed and reversed by this Court. The Petition for Writ of Certiorari should be granted.

Respectfully submitted,

SHERI L. HAZELTINE

TANANA CHIEFS CONFERENCE, INC.
122 First Avenue, Suite 600
Fairbanks, Alaska 99701
(907) 452-8251, ext. 3177
Co-Counsel of Record

August 15, 1994

APPENDIX A

(This is an original tape that was lodged with the Court.)

THE DISTRICT COURT FOR THE STATE OF ALASKA
FOR THE FOURTH JUDICIAL DISTRICT

STATE OF ALASKA,
Plaintiff,
vs.
JEFFERY D. SCOTT,
Defendant.

Case No. 4TO-S92-83 CR

MOTION TO DISMISS

This document and its attachments do not contain information that is confidential under A.S. 12.61.110 or the name of a victim of a crime listed in A.S. 12.61.140.

COMES NOW the defendant, Jeffery D. Scott, by and through his attorney, Sheri L. Donaldson, and hereby moves this Court to dismiss the action for lack of State jurisdiction. This motion is supported by the following memorandum.

DATED at Fairbanks, Alaska this 10th day of August, 1992.

TANANA CHIEFS CONFERENCE, INC.

/s/ Sheri L. Donaldson
Sheri L. Donaldson
Attorney for Mr. Scott

This is to certify that a copy of this Motion, Memorandum, & Order was hand-delivered on August 11th, 1992

to the following parties or attorneys of record: District Attorney's office.

/s/ Vera Wells 8/11/92
Vera Wells Date

THE DISTRICT COURT FOR THE STATE OF ALASKA
FOR THE FOURTH JUDICIAL DISTRICT AT TOK

STATE OF ALASKA,)
Plaintiff,)
vs.)
JEFFERY D. SCOTT,)
Defendant.)

Case No. 4TO-S92-83 CR

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

INTRODUCTION

The defendant moves for dismissal of the complaint in this case for the reason that the State has no jurisdiction to prosecute; and the State Court has no jurisdiction.

STATEMENT OF FACTS

Based upon the complaint and police report filed in this case, the defendant is alleged to have illegally possessed a bull moose during a closed hunting season under 5 A.A.C. 92.140(a). (See Exhibit A). According to

the complaint and police report, a moose is alleged to have been shot by Lavelle Jimmie, an Athabascan Indian from Northway, on May 8, 1992. (See Exhibit B and C). According to the police report by Trooper Thorsrud of the Alaska State Troopers in Tok, Lavelle Jimmie shot the moose because it was limping. According to a taped conversation between Lavelle Jimmie and Trooper Thorsrud, the moose was shot by Lavelle because it had a broken leg. (See Exhibit D, Tape Transcript between Trooper Thorsrud and Lavelle Jimmie).

The trooper never asked any of the suspects where the moose was shot. There is evidence that the moose was shot in the Tetlin Wildlife Refuge, on federal land.

Interestingly enough, the complainant State Trooper, Trooper Thorsrud, did not even report this "illegal moose kill" to federal Fish and Wildlife officials located at the Tetlin Wildlife Refuge, according to federal Fish and Wildlife officer Bob Schultz at the refuge.

The moose was shot on the north bank of the Nabesna River upriver from the Native Village of Northway, located approximately 250 miles away from Fairbanks. The location of the alleged harvest is on land which has been interim conveyed to the Northway Native, Inc. (Village corporation for Northway). (See Exhibit E). The interim conveyance of the tract (designated I.C. 964) was made pursuant to the Alaska Native Claims Settlement Act, P.L. 92-203, Section 12. (See Exhibit F). Interim Conveyance 964, November 9, 1984, conveys only surface rights to the village corporation. Sub-surface rights for the same tract was conveyed to

Doyon Regional Corporation pursuant to Interim Conveyance 965. (See Exhibit G).

The historic ancestors of the native village of Northway are confirmed by the presence of Upper Tanana Athabascan peoples residing on the Chisana and Nabesna drainages at the time of direct white contact in the 1880s. Martha F. Case, *Wild Resource Use in Northway, Alaska,* Published by the Alaska Department of Fish and Game, Division of Subsistence, June 1986, page 14. In the 1920s, the Old Nabesna camp on the east bank of the Nabesna River had reportedly been in use for two generations by members of the Old Nabesna band. *Id.* at page 19. The Old Nabesna band inhabited the lower Chisana River from Gardiner Creek to its mouth, and the lower Nabesna River from approximately the Cheslina River to the mouth, and the confluence of the two rivers and the beginning of the Tanana River. *Id.* at page 24.

Members of this band travelled northward to the upper Ladue drainage, and utilized the lakes and streams south to the Black Hills east of the Nabesna River. *Id.* This constitutes an area approximately 50 miles north-south and 25-30 miles east-west. *Id.* Two camps on the Nabesna River, called Nabesna Village or Old Nabesna, and Dry Creek, as well as several fish camps in the lower Nabesna and Chisana river area were occupied by this bank in the mid-20th century. *Id.*

Several trading posts were managed in the area, beginning in 1909 and 1910 with excursions by a Captain Northway from Fairbanks to the lower Nabesna River. *Id.* at page 16. Four posts were located over the years near a camp site of the lower Nabesna River people near the

present community of Northway. *Id.* In the early 1940s the Old Nabesna settlement moved to its present location along the east bank of the Nabesna River to avoid river erosion. *Id.* at page 17. The Alaska Highway along the northern edge of the valley was completed in 1942, and an airstrip was constructed approximately seven miles south of the highway, and two miles from the Nabesna village. *Id.* A graded road connected the airstrip and village to the highway. *Id.* A post office was established in 1941, and the village name was changed to Northway. *Id.* The population grew from approximately 100 residents in the early 1940s to over 300 by 1980. *Id.* A 1984 study of Northway households by ethnicity shows that 97% of the members of Northway Village are Alaska Natives. *Id.* at page 35.

Contemporary hunting areas for residents of the Native Village of Northway fall within former band territories, the descendants of which comprise a large portion of the current local hunting population. *Id.* at page 59. Northway residents harvested an estimated total of 90,091 edible pounds of wild resources between June 1987 and May 1988. Marcotte, James R., *Wild Fish and Game Harvest and Use by Residents of Five Upper Tanana Communities,* Published by the Alaska Department of Fish and Game, Division of Subsistence, December 1991, page 121. Moose hunting was the second largest contributor comprising 26.8 percent of the harvest, with whitefish harvest the highest harvest. *Id.*

Athabascan is a linguistic family which includes Indians from Alaska across Canada and extending down to the Mexico border. *See* John R. Swann, *Indian Tribes of Alaska and Canada,* A Reprint of a Portion of "The Indian

Tribes of North America" first published in Washington, D.C., 1952.

The governmental organization of these semi-nomadic Indian tribes was not a complicated one. Each tribe was headed by an elected chief who had only as much authority as the individuals were willing to grant him. *Handbook of North American Indians, Subarctic.* W.C. Sturtevant, J. Helm, Eds., at pg. 598.

The Athabascans of interior Alaska populated the region since prior to the coming of the Russians in 1843. The Indians of the Interior were the last to come into contact with white men. When non-Natives entered the Interior of Alaska, they came first to trade and later, generally, to exploit the natural resources of the indigenous peoples' territories. At first, the traders located their trading posts in or near the Natives' semi-permanent settlements or ceremonial meetings piaces. Later, the trading posts were placed at a distance from the Native Villages as the clash of cultural expectations between the Indians and the traders made the traders uncomfortable in close proximity to the Indians. *See Compilation of Narratives of Explorations in Alaska,* Washington Government Printing Office, 1900, Schwatka, pp. 341, 343; Raymond, pp. 36-37; Clarence C. Hulley, *Alaska; Past and Present,* Binfords & Mort, Publishers, Portland, Oregon, 1958 at pg. 27; 222-229.

After the arrival of the explorer and trader, the church came soon after, and then the miner. *Alaska Past and Present, Id.* at pp. 222-229. For the most part, the explorer and the miner were transients, leaving for new

discoveries, new strikes, and new territories. There remained the trader, the church and the Tribes.

STATEMENT OF LAW

Unless Congress has expressly ceded its authority, a State is without authority to manage hunting and fishing in "Indian Country." *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324 (1983).

In *Native Village of Tyonek v. Puckett et. al.*, pg. 346, (9th Cir. No. 87-3569, Jan. 13, 1992), the Court held that the Native Village of Tyonek qualified for sovereign immunity, and that its officers were also protected from liability based on derivative sovereign immunity for enforcement of a village ordinance requiring the eviction of non-tribal members from village territory. The Court stated that the village was under the superintendence of the federal government. *Id.* at 354. This test is met when the Government treats Indians as a "dependent people" requiring government superintendence, regulation, and protection. *Id.* The Court had previously held that Alaska Natives "have been considered to have the same status as other federally recognized American Indians . . . they are under the guardianship of the federal government and entitled to the benefits of the special relationship." *Id.* In addition, although the village holds its land in fee simple, the government has continued to regulate the affairs of Alaska Natives by passing legislation to protect their welfare and lands. *Id.; See Alaska National Interest Lands Conservation Act*, 16 U.S.C. 3111(4); Indian Child Welfare Act, 25 U.S.C. 1901(2) & (3). The record also demonstrated that the village received assistance from various

government agencies which provided the village with federal services and funds such as educational and housing grants. *Id.* at 355. This involvement by the government recognized the village's continuing dependence on federal help and involvement and fulfilled the Indian Country test. *Id.*

The Court in Tyonek held that ANCSA corporations may be considered "Indian Country". *Id.* at 354. The Court invoked the test articulated in *Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe of Oklahoma,* 111 S.Ct. 905, 910 (1991), which held that Indian Country comprises lands which have been set apart for use of the Indians "under the superintendence of the government".

On March 16, 1992 the Ninth Circuit Court of Appeals issued a new opinion, and withdrew their January 13, 1992 opinion. In that opinion, the Court stated that they had not addressed the question previously whether any Alaskan native village constituted an Indian tribe for the purpose of sovereign immunity. *See Native Village of Tyonek v. Puckett,* et al., No. 87-3569, pg. 9 (9th Cir. March 16, 1992). The Court stated that the District Court had failed to enter express findings of facts or develop a record to support is conclusion that the Native Village of Tyonek is an Indian tribe protected by sovereign immunity. *Id.* Accordingly, the Court remanded to the District Court so that an adequate record could be prepared so that they could review this complex factual question. *Id.; Native Village of Venetie,* 856 F.2d 1384 (9th Cir. 1988).

LEGAL ARGUMENT

In this case, it is clear that the land where the moose was shot was located on "Indian Country", within the jurisdiction of the Native Village of Northway. The land in question was undeveloped subject to restrictions on the title, created by federal statute. Consequently, the land is exempt from adverse possession, real property taxes, execution to satisfy debts, and alienation through bankruptcy. 43 U.S.C. Section 1636. This statutory scheme clearly establishes a protective relationship between the tribe and the federal government.

There is also ample evidence that the village receives federal assistance for education, housing, native health funds for clinics, prevention programs, safe drinking water and sanitation; Indian family and social service programs; protection of wildlife on lands owned by tribes or ANCSA corporations; and programs for employment of Indians. *See Affidavits* of Reva Shircel, Exhibit H; Don Shircel, Exhibit I; Al Ketzler, Sr., Exhibit J.

The defendant and the other residents of the Native Village of Northway live within this scheme of federal protection, and the lands held by Northway Natives, Inc. are an integral part of the federal government's protective relationship to the Native Village. The land is inseparable from the overall relationship existing between the federal government and the residents of the native village. As reflected by the federal government's regulation and legislation for the benefit of the Native Village of Northway and other native villages, the federal government exists as a benevolent overseer and protector of the Native Village of Northway and its residences.

In conclusion, it is clear that the Village corporation lands are "Indian Country", and the State of Alaska is without jurisdiction to regulate and manage fish and wildlife thereon.

For the foregoing reasons the complaint and action against the defendant should be dismissed for want of jurisdiction.

DATED this 11th day of August, 1992 in Fairbanks, Alaska.

TANANA CHIEFS CONFERENCE, INC.

/s/ Sheri L. Donaldson
Sheri L. Donaldson
Attorney for Mr. Scott

UNIFORM SUMMONS AND COMPLAINT
DEPARTMENT OF PUBLIC SAFETY

CASE No. _____ BAIL AMT. [ ]
STATE OF ALASKA MANDATORY APPEARANCE
YES [X] NO [ ]
4 JUDICIAL)
DISTRICT)SS No. [W543128]
) SUMMONS

IN THE DISTRICT COURT AT TOK

THE UNDERSIGNED, BEING DULY SWORN, UPON HIS OATH DEPOSES AND SAYS:

ON Friday THE 8 DAY OF MAY 1992, AT 11:45 A.M.
NAME SCOTT JEFF D
LAST (PLEASE PRINT) FIRST MIDDLE
STREET BOX 421
CITY-STATE Northway PHONE _____
AGE 22 BIRTH DATE 3-1-70 RACE W SEX M HT. 5'6"
WT. 145
EYES GRN HAIR BRN SOC. SEC. NO. 574-76-7165
LIC. NO. 6326335
KIND/CLASS_____ NUMBER_____ STATE_____
VEH. LIC. NO. ___ STATE ___ YR. ___
MAKE ___ STYLE ___ COLOR ___
PLACE OF EMPLOYMENT _____
AT OR NEAR (LOCATION) _____

DID UNLAWFULLY COMMIT THE FOLLOWING OFFENSE IN THE 4 JUDICIAL DISTRICT AND STATE AFORESAID:

TO WIT: POSSESSION OF ILLEGAL MOOSE WHICH IS IN VIOLATION OF
ALASKA [ ] STATUTE ___
[X] REGULATION ___

EVIDENCE RECEIPT: 4- BAGS MOOSE MEAT BLOOD FROM PICK UP

THE UNDERSIGNED FURTHER STATES THAT HE HAS JUST AND REASONABLE GROUNDS TO BELIEVE, AND DOES BELIEVE, THAT THE PERSON NAMED ABOVE COMMITTED THE OFFENSE HEREIN SET FORTH, CONTRARY TO LAW.

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 11 DAY OF May, 1992
/s/ Evelyn M Carson
Clerk of Court
(Name and Title)

/s/ Damon C. Thorsrud
(Signature and Identification of officer or other complainant)
(Unit No.) 54

COURT APPEARANCE: 11 DAY OF MAY, 1992, AT 2:00 P.M.,
ADDRESS OF COURT _____

I PROMISE TO APPEAR IN SAID COURT AT SAID TIME AND PLACE, BY SIGNING THIS SUMMONS, I AM AGREEING *ONLY* THAT I HAVE RECEIVED A COPY OF IT, AND THAT I WILL RESPOND AS REQUIRED.

SIGNATURE /s/ Jeff Scott
BT-213-A-FW 12-552 (1234)

TO COURT

FWP Case 920030726

In the District Court for the State of Alaska
Fourth Judicial District, Tok, Alaska

State of Alaska Plaintiff, vs. Jeffery Douglas Scott ID/LIC: 6326335 DOB: 03-01-70 Northway, AK ATN: 100135028 Defendant.	)	Misdemeanor Criminal Complaint No. 4TD-592-83-Cr. 5 AAC 92.140(a) Unlawful Possession of Game Moose

CERTIFICATION
(Filed May 11, 1992)

I certify that:

X This document and its attachments do not contain information that is confidential under AS 12.61.110 or the name of a victim of a crime listed in AS 12.61.140.

_ This document or an attachment contains confidential information that may be place in a court file under an exception listed in AS 12.61.130(b). This information appears at _____. This document and its attachments do not contain the name of a victim of a crime listed in AS 12.61.140.

Complainant, Damon C. Thorsrud, Alaska Fish and Wildlife Protection Trooper, personally appearing before me and being duly sworn, states that on or about the 8th day of May, 1992, at or near Northway, in the Fourth

Judicial District, State of Alaska, Jeffery Douglas Scott did unlawfully with criminal negligence possess parts of illegal game, to-wit: one bull moose taken during the closed season.

All of which is a Class A Misdemeanor offense being contrary to and in violation of 5 AAC 92.140(a) and against the peace and dignity of the State of Alaska.

This complaint is based on the observations and investigation of the complainant and statements of defendant that he did possess and transport a bull moose he knew was taken during the closed season.

km

/s/ Damon C. Thorsrud
(SIGNATURE OF COMPLAINANT)

Sworn to and subscribed before me this 11 day of May, 1992.

/s/ Evelyn M Carson,
Clerk of Court
Judge

(SEAL)

STATE OF ALASKA
DEPT. OF PUBLIC SAFETY

IV. 1984) INV. REPORT

Case No. 920030726

Investigating Agency	Detach	Invest. Unit	Reporting Officer	Perm. I.D.	Person/Offense Link Code
Fish & Wildlife Protection	E	TOFE	Trp. Chuck Thorsrud	DCTO	

OFFN. #	Offense Code	UCR No.	Type of Offense	Date Reported	Time Reported
1	8622		Moose Closed Season	5-7-92	1600

Date Occurred	Appr	Time Occurred	Appr	Relationship of Victim to Offender	Alcohol or Drugs Involved	Weapon/ Cause	Situation Code
5-5-92	X	UNK					

Location of Offense/Activity: Down Stream from Northway — Patrol Zone: HHEC

OFFN. #	Offense Code	UCR No.	Type of Offense	Date Reported	Time Reported
2	8640		Illegal Possession of Moose	5-7-92	1600

Date Occurred	Appr	Time Occurred	Appr	Relationship of Victim to Offender	Alcohol or Drugs Involved	Weapon/ Cause	Situation Code
5-6-92		1230	X				

Location of Offense/Activity: Oscar JIMMIE residence - Northway — Patrol Zone: HHEC — 1A

OFFN. #	Offense Code	UCR No.	Type of Offense	Date Reported	Time Reported

Date Occurred	Appr	Time Occurred	Appr	Relationship of Victim to Offender	Alcohol or Drugs Involved	Weapon/ Cause	Situation Code

Location of Offense/Activity: — Patrol Zone:

STATE OF ALASKA
MAY 27 1992
FOURTH JUDICIAL DISTRICT
DISTRICT ATTORNEY

OFFN. #	Offense Code	UCR No.	Type of Offense	Date Reported	Time Reported

Date Occurred	Appr	Time Occurred	Appr	Relationship of Victim to Offender	Alcohol or Drugs Involved	Weapon/ Cause	Situation Code

Location of Offense/Activity: — Patrol Zone:

Pers. No.	Role(s)	Name	Sex	Race	Ht.	Weight	Hair	Eyes	Date of Birth	Appr. Birth Yr
1	DI	Jeffery SCOTT	M	W	66	145	BRO	GRN	3-1-70	

Residence Address	Residence Phone	Driver's License No.	State
Box 421 - Northway, AK 99764		6326335	AK

Work Address	Work Phone	Occupation

Date Interviewed	Advised of Rights	Yes	No	By	Other Identification No.	Type of Ident.
5-8-92			X			

Statement Taken Yes	Statement Taken No	Criminal Record Yes	Criminal Record No	FWP Record Yes	FWP Record No	Blood Alcohol Results	Social Security No.	Suspect in Offn. Number	Juv. Dispo.
X			X		X		574-76-7165		

	A	B	C	D	E	Violent Crime / Domestic Viol. Notice Given	
CHARGED WITH	8640					VC	
CHARGED BY	P W S X	P W S	P W S	P W S	P W S	DV	
CITATION NO.	W543128					Supplemental Form Used Re: Info On This Page	

Pers. No.	Role(s)	Name	Sex	Race	Ht.	Weight	Hair	Eyes	Date of Birth	Appr. Birth Yr
2	SI	Lavelle B. JIMMIE	M	I	65	120	BLK	BRO	5-4-76	

Residence Address	Residence Phone	Driver's License No.	State
Box 421 - Northway, AK 99764		6487679	AK

Work Address	Work Phone	Occupation

Date Interviewed	Advised of Rights	Yes	No	By	Other Identification No.	Type of Ident.
5-11-92			X			

Statement Taken Yes	Statement Taken No	Criminal Record Yes	Criminal Record No	FWP Record Yes	FWP Record No	Blood Alcohol Results	Social Security No.	Suspect in Offn. Number	Juv. Dispo.
X			X		X		574-58-5157	1 2	

	A	B	C	D	E	Violent Crime / Domestic Viol. Notice Given	
CHARGED WITH						VC	
CHARGED BY	P W S	P W S	P W S	P W S	P W S	DV	
CITATION NO.						Supplemental Form Used Re: Info On This Page	

3V

ATN 100135028

(C)

B-15

STATE OF ALASKA
DEPT. OF PUBLIC SAFETY

CASE NO. 920030726

CHECK BOX IF PROPERTY VALUES LISTED BELOW ARE SUPPLEMENTS TO ORIGINAL REPORT ☐

12-[illegible] (REV. 1984) INV. REPORT

VEHICLE INFO.	NUMB.	LICENSE PLATE NO.	STATE	VEHICLE IDENTIFICATION NO.	VEH. YEAR	MAKE	MODEL	BODY STYLE
	1	9155CM	AK	1B7FN14C7J5622077	88	DODGE		PK

COLOR	NUMB. OCCUP.	MALE	FEM.	EVIDENCE FOUND IN VEHICLE	YES	NO	VEHICLE STATUS	IMPOUND	STOLEN	SEIZED	SUSPECT	AIRCRAFT INFORMATION	NUMBER	REGISTRATION (N) NUMBER
BLU					X						X			

MAKE	MODEL	YEAR	COLOR	LANDING GEAR TYPE	AIRCRAFT STATUS	IMPOUND	STOLEN	SEIZED	SUSPECT

WATER-CRAFT INFO.	NUMBER	USCG OR DOCUMENTATION NO.	NAME OF WATERCRAFT	MAKE	LENGTH

TYPE	COLOR	ADF&G NUMBER	HULL SHAPE	HULL MAT'L	PROPULSION	WATER-CRAFT STATUS	IMPOUND	STOLEN	SEIZED	SUSPECT

PHOTOS	SCENE		AUTOPSY		OTHER	EXHIBITS	WAIVER RIGHTS		ALCOH. INF. RPT.		OTHER	EVIDENCE SEIZED	YES	NO
	VICTIM		EVIDENCE				DIAGRAM		IMPL. CONSENT					

PROPERTY LOSS VALUES BY TYPE AND OFFENSE (See Codes on Back)

OFFN #	TYPE	$	OFFN #	TYPE	$	OFFN #	TYPE	$	OFFN #	TYPE	$

TOTAL PROPERTY LOSS/RECOVERY VALUES — EACH OFFENSE

OFFN #	$ LOSS	$ RECOVERED	OFFN #	$ LOSS	$ RECOVERED	OFFN #	$ LOSS	$ RECOVERED

SYNOPSIS:

WSG Complaint # 92-046 states "Jeff" and a juvenile unloaded a moose from a small blue pickup at Oscar JIMMIE's residence.

(2)

CLOSURE	ARREST	PROS. DECL.	UNFOUNDED	NO O/LEADS	EXCEPTION	CASE REF.	REFERRED TO	COPIES TO
	✓							DAG 5/27/92

REPORTING OFFICER	PERM. IDENT.	REVIEWED AND APPROVED BY	PERM. IDENT.	DATE CLOSED
Thorsrud	DCTO	SATHSON	CJSO	5-26-92

STATE OF ALASKA
DEPT. OF PUBLIC SAFETY

Reporting Officer	Perm. Ident.	Case No.
C. Thorsrud	DCTO	920030726

Pers. No.	Role(s)	Name	Sex	Race	Ht.	Weight	Hair	Eyes	Date of Birth	Appr. Birth Yr
	SI	Oscar JIMMIE	M	I	67	180	BLK	BRO	5-13-26	

Residence Address	Residence Phone	Driver's License No.	State
Box 421 - Northway, AK 99764		6035588	AK

Work Address	Work Phone	Occupation

Date Interviewed	Advised of Rights	Yes	No	By	Other Identification No.	Type of Ident.
5-8-92			X			

Statement Taken	Yes	No	Criminal Record	Yes	No	FWP Record	Yes	No	Blood Alcohol Results	Social Security No.	Suspect in Offn. Number	Juv. Dispo.
	X			X			X			574-47-4039	2	

CHARGED WITH																				Violent Crime Domestic Viol. Notice Given	V.C.	
																					D.V.	
CHARGED BY	P	W	S	P	W	S	P	W	S	P	W	S	P	W	S	P	W	S		Supplemental Form Used Re: Info On This Page		
CITATION NO.																						

Pers. No.	Role(s)	Name	Sex	Race	Ht.	Weight	Hair	Eyes	Date of Birth	Appr. Birth Yr

Residence Address	Residence Phone	Driver's License No.	State

Work Address	Work Phone	Occupation

Date Interviewed	Advised of Rights	Yes	No	By	Other Identification No.	Type of Ident.

Statement Taken	Yes	No	Criminal Record	Yes	No	FWP Record	Yes	No	Blood Alcohol Results	Social Security No.	Suspect in Offn. Number	Juv. Dispo.

CHARGED WITH																				Violent Crime Domestic Viol. Notice Given	V.C.	
																					D.V.	
CHARGED BY	P	W	S	P	W	S	P	W	S	P	W	S	P	W	S	P	W	S		Supplemental Form Used Re: Info On This Page		
CITATION NO.																						

Pers. No.	Role(s)	Name	Sex	Race	Ht.	Weight	Hair	Eyes	Date of Birth	Appr. Birth Yr

Residence Address	Residence Phone	Driver's License No.	State

Work Address	Work Phone	Occupation

Date Interviewed	Advised of Rights	Yes	No	By	Other Identification No.	Type of Ident.

Statement Taken	Yes	No	Criminal Record	Yes	No	FWP Record	Yes	No	Blood Alcohol Results	Social Security No.	Suspect in Offn. Number	Juv. Dispo.

CHARGED WITH																				Violent Crime Domestic Viol. Notice Given	V.C.	
																					D.V.	
CHARGED BY	P	W	S	P	W	S	P	W	S	P	W	S	P	W	S	P	W	S		Supplemental Form Used Re: Info On This Page		
CITATION NO.																						

Pers. No.	Role(s)	Name	Sex	Race	Ht.	Weight	Hair	Eyes	Date of Birth	Appr. Birth Yr

Residence Address	Residence Phone	Driver's License No.	State

Work Address	Work Phone	Occupation

Date Interviewed	Advised of Rights	Yes	No	By	Other Identification No.	Type of Ident.

Statement Taken	Yes	No	Criminal Record	Yes	No	FWP Record	Yes	No	Blood Alcohol Results	Social Security No.	Suspect in Offn. Number	Juv. Dispo.

CHARGED WITH																				Violent Crime Domestic Viol. Notice Given	V.C.	
																					D.V.	
CHARGED BY	P	W	S	P	W	S	P	W	S	P	W	S	P	W	S	P	W	S		Supplemental Form Used Re: Info On This Page		
CITATION NO.																						

920030726

B-17

DEPARTMENT OF PUBLIC SAFETY

FILE NO. 920030726

ALASKA STATE TROOPERS, E DETACHMENT TOFE POST.
INVESTIGATED BY Trooper Chuck Thorsrud DATE(S) INVESTIGATED 05-08 1992
TITLE OF CASE Take Moose – Closed Season

INTERVIEW #1DI, Pg1, Jeffery SCOTT

Interviewed in the FWP pickup in front of the Oscar JIMMIE residence in Northway at approximately 1120 hours.

SCOTT stated in essence that he and Lavelle (Oscar JIMMIE's grandson), went hunting. Lavelle shot the bull moose using Oscar JIMMIE's .30-30 rifle. The moose was transported back to the JIMMIE residence using SCOTT's pickup (blue Dodge, license # 9155CM).

The moose is currently at the JIMMIE residence in a meat house. A copy of the taped interview is available at Tok AST.

INTERVIEW #3SI, Pg3, Oscar JIMMIE

Interviewed at the Oscar JIMMIE residence in Northway at approximately 1130 hours.

JIMMIE stated in essence that the moose has been cut up. The bones, head and [illegible] meat are in the meat house. JIMMIE accompanied Trp. Thorsrud to the meat house, opened the door and gave permission for access.

A copy of the taped interview is available at Tok AST.

JIMMIE stated outside (off tape) that Lavelle is his grandson and is in his custody.

INTERVIEW #2SI, Pg1, Lavelle B. JIMMIE

Interviewed at the Tok Court House at approximately 1400 hours. Present during the interview was Oscar JIMMIE, Lavelle JIMMIE's guardian.

Lavelle JIMMIE stated he shot the moose because it was limping. The moose was shot with a .30-30. He stated he knew the moose season was closed.

A copy of the taped interview is available at Tok AST.

On 5/7/92 I received anonymous information from the Alaska Fish & Wildlife Safeguard Program stating that a complainant observed 2 suspects unloading a moose at Oscar JIMMIE's residence. The moose was killed 5/4/92 or 5/5/92 and brought in on 5/6/92 at approximately 12:30 p.m. The suspects were described as one white male adult named "Jeff", and one white native juvenile. The truck used to transport the moose was described as a small navy blue pickup, possibly Ford.

On 5/8/92 at approximately 11:00 a.m. I went to the Oscar JIMMIE residence with Trooper Gallen (Northway AST). Oscar JIMMIE was contacted outside his residence and asked if we could go inside to talk. JIMMIE answered yes. Several individuals were observed inside the JIMMIE residence, including a white male adult who identified himself as Jeff SCOTT. I explained to Oscar JIMMIE that I was there because of the moose and I needed to talk to Jeff SCOTT out in my truck.

Jeff SCOTT accompanied myself to the FWP pickup where the interview took place. SCOTT indicated that the blue pickup parked in Oscar JIMMIE's driveway is his and it was used to transport the moose.

After the SCOTT interview, we went to the blue, Dodge pickup, license 9155CM, and I observed dried blood and hair in the pickup bed in plain view. A sample of blood and hair were obtained as evidence.

After looking at the blue pickup, SCOTT and myself went back to the JIMMIE residence and recontacted Oscar JIMMIE. I explained to JIMMIE that I knew the moose was in his meat house, but that I couldn't go get it without his permission. JIMMIE gave authorization to go to the meat house and JIMMIE, SCOTT, and myself went to the meat house. JIMMIE opened the door to the meat house and SCOTT brought out the head of a freshly killed bull moose. Additional meat could be observed hanging from poles in the meat house. A small smoke fire was burning in the center of the meat house. I, again, asked JIMMIE if I could come in and he stated yes. SCOTT indicated that some of the meat in the meat house was caribou, and some was moose. The meat SCOTT stated was caribou appeared much drier than the moose meat.

Trooper Gallen left to get bags to put the moose meat in and returned in approximately 10 minutes.

Jeff SCOTT and myself returned to the meat house. SCOTT identified which pieces of meat were moose. They were placed in bags, put in the FWP pickup, and retained as evidence.

On 5-13-92 I returned to the Oscar JIMMIE residence and contacted JIMMIE and SCOTT. I asked JIMMIE if he still had the leg bone from the moose that may be broken. He went into the meat house and came out with a leg bone with a fresh break. JIMMIE stated he didn't know when or how the leg got broke. The leg was retained as evidence.

STATE OF ALASKA
DEPT. OF PUBLIC SAFETY

12-210 PROPERTY REPORT (REV. 1984)

Location Of Items Listed On This Page: York

Name Of Officer In Charge Of Items | Perm. Ident.

Case No. 92 30726

Item No.	Type Code	Stolen	Recov.	Evid.	Found	Safe Kp.	Value $	Type of Article	Brand Name
5	Y			Y			C	BLOOD/HAIR	

Model	Model Year	Caliber	Serial No.	Owner Applied Number

Size	Color	Distinguishing Marks Or Other Means Of Identification
		IN WSC EVID.

COMP. INPUT: APSIN | NCIC | HIT

Date Entered	Date Prop. Stored	Date Subm. For Exam	P.O. Reg. Number

Submitted To | Return Date | Final Disposition Of Article

This is to certify that I, the undersigned, received the property described in this section and relieve the Dept. of Public Safety from responsibility for same.
Signature or P.O. Reg. No.
X

Item No.	Type Code	Stolen	Recov.	Evid.	Found	Safe Kp.	Value $	Type of Article	Brand Name
6	Y			X			C	MOOSE HEAD	

Model	Model Year	Caliber	Serial No.	Owner Applied Number

Size	Color	Distinguishing Marks Or Other Means Of Identification
		BULL

COMP. INPUT: APSIN | NCIC | HIT

Date Entered	Date Prop. Stored	Date Subm. For Exam	P.O. Reg. Number

Submitted To | Return Date | Final Disposition Of Article

This is to certify that I, the undersigned, received the property described in this section and relieve the Dept. of Public Safety from responsibility for same.
Signature or P.O. Reg. No.
X

Item No.	Type Code	Stolen	Recov.	Evid.	Found	Safe Kp.	Value $	Type of Article	Brand Name
	Y			X				LEG (MOOSE)	

Model	Model Year	Caliber	Serial No.	Owner Applied Number

Size	Color	Distinguishing Marks Or Other Means Of Identification
		BROKE L/

COMP. INPUT: APSIN | NCIC | HIT

Date Entered	Date Prop. Stored	Date Subm. For Exam	P.O. Reg. Number

Submitted To | Return Date | Final Disposition Of Article

This is to certify that I, the undersigned, received the property described in this section and relieve the Dept. of Public Safety from responsibility for same.
Signature or P.O. Reg. No.
X

Item No.	Type Code	Stolen	Recov.	Evid.	Found	Safe Kp.	Value $	Type of Article	Brand Name

Model	Model Year	Caliber	Serial No.	Owner Applied Number

Size	Color	Distinguishing Marks Or Other Means Of Identification

COMP. INPUT: APSIN | NCIC | HIT

Date Entered	Date Prop. Stored	Date Subm. For Exam	P.O. Reg. Number

Submitted To | Return Date | Final Disposition Of Article

This is to certify that I, the undersigned, received the property described in this section and relieve the Dept. of Public Safety from responsibility for same.
Signature or P.O. Reg. No.
X

Item No.	Type Code	Stolen	Recov.	Evid.	Found	Safe Kp.	Value $	Type of Article	Brand Name

Model	Model Year	Caliber	Serial No.	Owner Applied Number

Size	Color	Distinguishing Marks Or Other Means Of Identification

COMP. INPUT: APSIN | NCIC | HIT

Date Entered	Date Prop. Stored	Date Subm. For Exam	P.O. Reg. Number

Submitted To | Return Date | Final Disposition Of Article

This is to certify that I, the undersigned, received the property described in this section and relieve the Dept. of Public Safety from responsibility for same.
Signature or P.O. Reg. No.
X

SEE "TYPE CODE" ON BACK

Page _____ of _____

B-22

STATE OF ALASKA
DEPT. OF PUBLIC SAFETY

12-210 PROPERTY REPORT (REV. 1984)

Location Of Items Listed On This Page: TOK

Name Of Officer In Charge Of Items: THORSEN | Perm. Ident.: DCTD

Case No.: 92 30726

Item No.	Type Code	Stolen	Recov.	Evid.	Found	Safe Kp.	Value $	Type of Article	Brand Name
1									

Model	Model Year	Caliber	Serial No.	Owner Applied Number

Size	Color	Distinguishing Marks Or Other Means Of Identification

COMP. INPUT	APSIN / NCIC	HIT	Date Entered	Date Prop. Stored	Date Subm. For Exam	P.O. Reg. Number

Submitted To | Return Date | Final Disposition Of Article

This is to certify that I, the undersigned, received the property described in this section and relieve the Dept of Public Safety from responsibility for same.
Signature or P.O. Reg. No.
X

Item No.	Type Code	Stolen	Recov	Evid.	Found	Safe Kp.	Value $	Type of Article	Brand Name
1	4			X			0	MOOSE MEAT	

Model	Model Year	Caliber	Serial No.	Owner Applied Number

Size	Color	Distinguishing Marks Or Other Means Of Identification
		SMOKED

COMP. INPUT	APSIN / NCIC	HIT	Date Entered	Date Prop. Stored	Date Subm. For Exam	P.O. Reg. Number

Submitted To | Return Date | Final Disposition Of Article

This is to certify that I, the undersigned, received the property described in this section and relieve the Dept of Public Safety from responsibility for same.
Signature or P.O. Reg. No.
X

Item No.	Type Code	Stolen	Recov	Evid.	Found	Safe Kp.	Value $	Type of Article	Brand Name
2	4			X			0	MOOSE MEAT	

Model	Model Year	Caliber	Serial No.	Owner Applied Number

Size	Color	Distinguishing Marks Or Other Means Of Identification
		SMOKED

COMP. INPUT	APSIN / NCIC	HIT	Date Entered	Date Prop. Stored	Date Subm. For Exam	P.O. Reg. Number

Submitted To | Return Date | Final Disposition Of Article

This is to certify that I, the undersigned, received the property described in this section and relieve the Dept. of Public Safety from responsibility for same.
Signature or P.O. Reg. No.
X

Item No.	Type Code	Stolen	Recov	Evid.	Found	Safe Kp.	Value $	Type of Article	Brand Name
3	4			X			0	MOOSE MEAT	

Model	Model Year	Caliber	Serial No.	Owner Applied Number

Size	Color	Distinguishing Marks Or Other Means Of Identification
		SMOKED

COMP. INPUT	APSIN / NCIC	HIT	Date Entered	Date Prop. Stored	Date Subm. For Exam	P.O. Reg. Number

Submitted To | Return Date | Final Disposition Of Article

This is to certify that I, the undersigned, received the property described in this section and relieve the Dept. of Public Safety from responsibility for same.
Signature or P.O. Reg. No.
X

Item No.	Type Code	Stolen	Recov	Evid.	Found	Safe Kp.	Value $	Type of Article	Brand Name
4	4			X			0	MOOSE MEAT	

Model	Model Year	Caliber	Serial No.	Owner Applied Number

Size	Color	Distinguishing Marks Or Other Means Of Identification
		SMOKED

COMP. INPUT	APSIN / NCIC	HIT	Date Entered	Date Prop. Stored	Date Subm. For Exam	P.O. Reg. Number

Submitted To | Return Date | Final Disposition Of Article

This is to certify that I, the undersigned, received the property described in this section and relieve the Dept of Public Safety from responsibility for same.
Signature or P.O. Reg. No.
X

SEE "TYPE CODE" ON BACK

Page _____ of _____

B-23

Tape Two – Interrogation between Trooper Thorsrud and Lavelle Jimmie. (Q = Trooper Thorsrud; A = Lavelle Jimmie).·

* * *

A: (inaudible) . . . one leg . . . (inaudible).

Q: Did it have any broken leg when it (inaudible)?

A: Yeah . . . (inaudible).

Q: It was broken, huh?

A: Yeah (inaudible).

Q: When I talked to Jeff, though, he said when you went out you went out to go moose hunting? Is that true?

A: No. It just came out of the woods. We were going to camp out.

Q: Were you duck hunting or moose hunting?

A: (inaudible). Just duck.

Q: But you shot it with a 30-30, so you had a big rifle with you?

A: 30-30.

Q: If you ever wound a moose like that, and you shot it, is there some reason you didn't contact the State Troopers or myself?

A: (inaudible).

Q: If you ever cripple a moose like that, you're going to cripple bad. We can make justification for shooting that thing. If you don't notify us, then we can't do it,

after the fact. You knew the season was closed when you shot it, didn't you?

A: Uh hum.

Q: Uh hum, that's yes?

A: Yes.

Q: O.k. And you know that shooting moose in the closed season can be serious?

A: Yes.

Q: O.K. And you're what, 15 years old? Sixteen?

A: Fifteen.

Q: Well, I don't have any plans of giving you a ticket at all. But I want you to know that taking a moose during closed season is more than just a game, o.k.? And as far as the ducks you've been shooting at, you know duck season is closed too? You know that? O.K., if I catch you out poaching again, you probable wouldn't get another break like this?

A: Uh huh.

Q: You get a warning right now. Is that fair to you?

A: Yes, that's good.

Q: O.K. And you can sit in here and watch what's going to happen, because when it's all over with, you'll realize it isn't just a game. Okay?

A: Um.

Q: Alright. (inaudible). You said it had a broken leg?

A: Yeah, I seen it, I think that bone (inaudible).

Q: No, I didn't bring the bones to that. I didn't say anything about broken bones when I was there.

A: (inaudible)

Q: You're sure it was broken, it wasn't shot?

A: I don't know. (inaudible).

Q: I think I saw that moose on about the 2nd of May. 'Cause I came through there on the 2nd of May, there was a little bull just like that.

A: Oh, you seen it out there?

Q: Yeah, from up on the highway I saw him. And it looked like he was walking okay then. That's why I thought maybe the leg got broke when you were shooting at it.

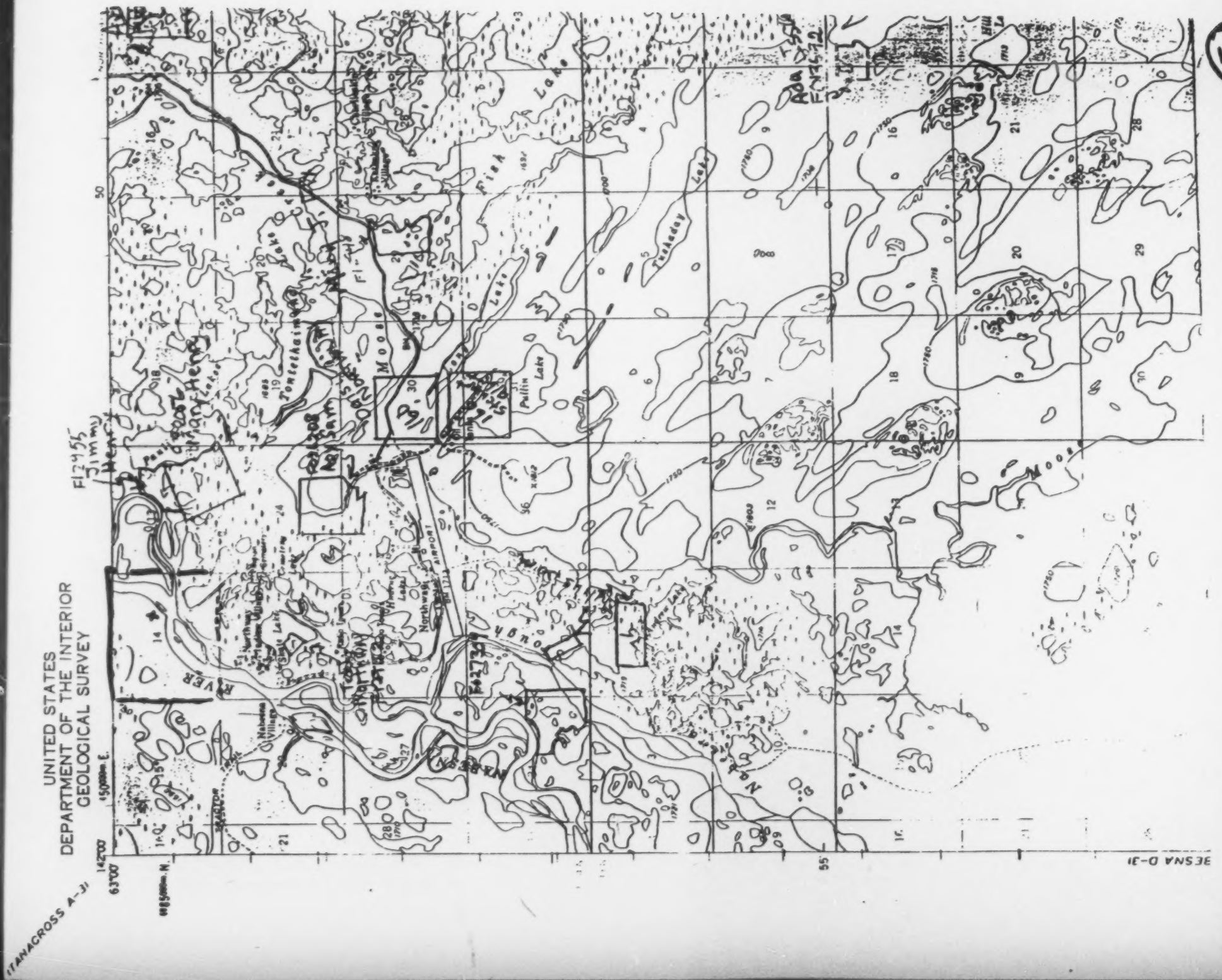
A: (inaudible).

Q: Matter of fact it happened in Northway a couple of years ago when there was caribou over there, it had a broken leg. And people called me, and I said, okay, go ahead and shoot it. And it was shot (inaudible) in the village. It's the only way I can take care of you if you tell me ahead of time what's going on. Okay? That way nobody gets in trouble. And the moose gets used.

A: Yeah.

Q: Okay?

(End of tape.)


UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY
TANACROSS A-3
ESNA D-3
Moose Creek
Pollin Lake
Yukon
River
Tetlin
Northway
Nabesna
Fl 2455
Lake
Ada
Mt 5112

F-14912-A
F-14912-B

INTERIM CONVEYANCE

WHEREAS

Northway Natives Incorporated

is entitled to a conveyance pursuant to Secs. 14(a) and 22(j) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), 1621(j), of the surface estate in the following-described lands:

U.S. Survey No. 2630, Alaska. Nabeana (Northway) Air Navigation Site. Situate on the right banks of Nabeana River, approximately one mile southeast of Nabeana Village, excluding Air Navigation Site 162, Public Land Order 4345, Quitclaim Deed dated June 1, 1966, Native allotment F-027296 parcel A, Revocation and Restoration application F-025129, and Alaska Native Claims Settlement Act Section 3(e) application F-36063 and F-38991.

Containing approximately 305 acres.

Copper River Meridian, Alaska. (Surveyed).

T. 14 N., R. 18 E.

Secs. 1 and 2, excluding U.S. Survey No. 6164;

Sec. 3, those lands formerly within Native allotment F-013598;

Secs. 8 and 9;

Secs. 11 and 12, excluding U.S. Survey No. 6164;

Sec. 13, excluding U.S. Survey No. 5347 and Native allotment F-12955 Parcel A;

Secs. 14 to 17, inclusive;

Sec. 23, excluding U.S. Survey No. 4027, U.S. Survey No. 2630, and Native allotment F-12952 Parcel A;

Sec. 24, excluding U.S. Survey No. 5347 and U.S. Survey No. 5091;

Sec. 25, excluding U.S. Survey No. 5091, U.S. Survey No. 4017, U.S. survey No. 2630, and Air Navigation Site 8;

Secs. 26 and 27, excluding U.S. survey No. 2630;

Sec. 28;

Sec. 31, excluding Native allotment F-013593;

Interim Conveyance No. 964

Date Nov. 09, 1984

F-14912-A
F-14912-B

INTERIM CONVEYANCE

WHEREAS

Doyon, Limited

is entitled to a conveyance pursuant to Secs. 14(f) and 22(j) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(f), 1621(j), of the sub-surface estate reserved to the United States in the hereinbelow identified interim conveyance of the surface estate in the following-described lands:

Interim Conveyance No. 964

U.S. Survey No. 2630, Alaska. Nabeana (Northway) Air Navigation Site. Situate on the right banks of Nabeana River, approximately one mile southeast of Nabeana Village, excluding Air Navigation Site 162, Public Land Order 4349, Quitclaim Deed dated June 1, 1966, Native allotment F-027296 Parcel A, Revocation and Restoration application F-025129, and Alaska Native Claims Settlement Act Section 3(e) application F-36063 and F-38991.

Containing approximately 305 acres.

Copper River Meridian, Alaska. (Surveyed).

T. 14 N., R. 18 E.

Secs. 1 and 2, excluding U.S. Survey No. 6164;

Sec. 3, those lands formerly within Native allotment F-013598;

Secs. 8 and 9;

Secs. 11 and 12, excluding U.S. Survey No. 6164;

Sec. 13, excluding U.S. Survey No. 5347 and Native allotment F-12955 Parcel A;

Secs. 14 to 17, inclusive;

Sec. 23, excluding U.S. Survey No. 4027, U.S. Survey No. 2630, and Native allotment F-12952 Parcel A;

Sec. 24, excluding U.S. Survey No. 5347 and U.S. Survey No. 5091;

Sec. 25, excluding U.S. Survey No. 5091, U.S. Survey No. 4017, U.S. survey No. 2630, and Air Navigation Site 8;

Interim Conveyance No. 964

Date Nov. 09, 1984

IN THE DISTRICT COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT

STATE OF ALASKA,)
Plaintiff,)
)
vs.)
)
JEFFERY SCOTT,)
Defendant.)
)

Case No. 4TO-S92-83 Cr.

AFFIDAVIT OF REVA SHIRCEL

STATE OF ALASKA)
) ss.
Fourth Judicial District)

REVA SHIRCEL, being duly sworn, upon oath, deposes and states as follows:

1. That I am the Director of Education for Tanana Chiefs Conference, Inc.;

2. That Tanana Chiefs Conference, Inc. is a non-profit corporation organized under the laws of the State of Alaska and is a "tribal organization" as defined by the Indian Self Determination Act, P.L. 93-638, Section 4(c);

3. That as a tribal organization TCC is eligible under section 102 of the Act to enter into contracts with the Departments of the Interior, Health, Education and Welfare, for the administration of programs established under federal law for the benefit of Indians:

4. That in my job as Director of Education I am in a position to know about federal grants and programs for Indian Education which affect the native villages in the TCC region;

5. That in the fiscal year 92, approximately $10,895 was received for the Northway school from the Federal Johnson O'Malley program for cultural heritage activities for elementary and secondary school Indian children.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 11th day of August, 1992 at Fairbanks, Alaska.

/s/ Reva Shircel
Reva Shircel

SUBSCRIBED AND SWORN TO before me this 11th day of August, 1992 at Fairbanks, Alaska.

/s/ Gloria J. Wellman
Notary Public in and for the State of Alaska

My Commission Expires on: 8/29/95

IN THE DISTRICT COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT

STATE OF ALASKA,)
Plaintiff,)
)
vs.)
)
JEFFERY SCOTT,)
Defendant.)
)

Case No. 4TO-S92-83 Cr.

AFFIDAVIT OF DON SHIRCEL

STATE OF ALASKA)
) ss.
Fourth Judicial District)

Don Shircel, being duly sworn, upon oath, deposes and states as follows:

1. That I am the Director of Family Services for Tanana Chiefs Conference, Inc.;

2. That Tanana Chiefs Conference, Inc. is a non-profit corporation organized under the laws of the State of Alaska and is a "tribal organization" as defined by the Indian Self Determination Act, P.L. 93-638, Section 4(c);

3. That as a tribal organization TCC is eligible under section 102 of the Act to enter into contracts with the Departments of the Interior, Health, Education and Welfare, for the administration of programs established under federal law for the benefit of Indians;

4. That in my job as Director of Family Services I am in a position to know about federal grants and programs for Indian Family Services which affect the native villages in the TCC region;

5. That in the fiscal year 92, approximately $13,860 was received for the Native Village of Northway for the low-income Home Energy Assistance Program;

6. That 32 villages of the TCC service area, including Northway, shared on a pro rata basis in a fiscal year 92 appropriation of $85,000, from the Indian Child Welfare Act grant filed by TCC on their behalf as a federally-recognized tribe.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 11th day of August, 1992 at Fairbanks, Alaska.

/s/ Don Shircel
Don Shircel

SUBSCRIBED AND SWORN TO before me this 11th day of August 1992 at Fairbanks, Alaska.

/s/ Susan Paskvan
Notary Public in and for the State of Alaska

My Commission Expires on: 9/27/93

IN THE DISTRICT COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT

STATE OF ALASKA,)
Plaintiff,)
)
vs.)
)
JEFFERY SCOTT,)
Defendant.)
)

Case No. 4TO-S92-83 Cr.

AFFIDAVIT OF AL KETZLER, SR.

STATE OF ALASKA)
) ss.
Fourth Judicial District)

Al Ketzler, Sr., being duly sworn, upon oath, deposes and states as follows:

1. That I am the Chief Administrative Officer for Tanana Chiefs Conference, Inc., (TCC);

2. That Tanana Chiefs Conference, Inc. is a non-profit corporation organized under the laws of the State of Alaska and is a "tribal organization" as defined by the Indian Self Determination Act, P.L. 93-638, Section 4(c);

3. That as a tribal organization TCC is eligible under section 102 of the Act to enter into contracts with the Departments of the Interior, Health, Education and Welfare, for the administration of programs established under federal law for the benefit of Indians;

4. That in my job as Chief Administrative Officer I am in a position to know about federal grants and programs which affect the native villages in the TCC region;

5. That as an Indian Tribe recognized under federal law, the Native Village of Northway is figured into funding formulas and shares in the benefits of federal programs and grants intended to benefit Indians;

6. That these programs and grants have included, but are not limited to:

a.) Administration for Native Americans for assistance in rural economic development and preparation of a model code for tribal courts, (1989 – 1991);

b.) Bureau of Indian Affairs contracts for the management of employment, health services, social services, housing, education, forestry, tribal operations, agriculture, wildlife and parks, and realty;

c.) Indian Child Welfare grants from the BIA, which grants are intended to provide counseling coordination and support to Native families;

d.) the Intertribal Agriculture Council.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 11th day of August, 1992 at Fairbanks, Alaska.

/s/ Al Ketzler, Sr.
Al Ketzler, Sr.

SUBSCRIBED AND SWORN TO before me this 11th day of August, 1992 at Fairbanks, Alaska.

/s/ Perry R. Ahsogeak
Notary Public in and for the State of Alaska
My Commission Expires on: 6/1/96

IN THE DISTRICT COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT

STATE OF ALASKA,)
Plaintiff,)
)
vs.)
)
JEFFERY D. SCOTT,)
Defendant.)
)

Case No. 4TO-S92-83 CR.

ORDER

The defendant having filed his Motion to Dismiss for Lack of Jurisdiction; and the Court being fully apprised in the premises; it is hereby ordered that the defendant's motion is GRANTED.

DATED this ___ day of _____, 1992.

_____
DISTRICT COURT JUDGE

IN THE DISTRICT COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT

STATE OF ALASKA,)
Plaintiff,)
vs.)
JEFFERY D. SCOTT,)
Defendant.)
)

Case No. 4TO-S92-83 Cr.

OPPOSITION TO MOTION TO DISMISS FOR LACK OF STATE JURISDICTION

(Filed Sep. 18, 1992)

CERTIFICATION

[XXX] This document and its attachments do not contain information that is confidential under AS 12.61.110 or the name of a victim of a crime listed in AS 12.61.140.

[___] This document or an attachment contains confidential information that may be placed in a court file under an exception listed in AS 12.61.130(b). This information appears at page(s) ___. This document and its attachments do not contain the name of a victim of a crime listed in AS 12.61.140.

COMES NOW the State of Alaska, by and through Jeffrey O'Bryant, Assistant District Attorney, and enters its opposition to the defendant's motion and moves this court for an order denying the motion.

DATED at Fairbanks, Alaska, this 15th day of September, 1992.

CHARLES E. COLE
ATTORNEY GENERAL

HARRY L. DAVIS
DISTRICT ATTORNEY

By: /s/ Jeffrey O'Bryant
Jeffrey O'Bryant
Assistant District Attorney

THIS IS TO CERTIFY THAT A COPY OF THE FOREGOING IS BEING:
___ MAILED ___ HAND DELIVERED TO THE FOLLOWING ATTORNEY(S) OR PARTIES OF RECORD:

_____

NAME DATE

IN THE DISTRICT COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT

STATE OF ALASKA,)
Plaintiff,)
vs.)
JEFFERY D. SCOTT,)
Defendant.)
)

Case No. 4TO-S92-83 Cr.

MEMORANDUM OF LAW

CERTIFICATION

[XXX] This document and its attachments do not contain information that is confidential under AS 12.61.110 or the name of a victim of a crime listed in AS 12.61.140.

[___] This document or an attachment contains confidential information that may be placed in a court file under an exception listed in AS 12.61.130(b). This information appears at page(s) ___. This document and its attachments do not contain the name of a victim of a crime listed in AS 12.61.140.

The defendant asks this court to find that the state courts of Alaska do not have jurisdiction over the criminal conduct of non-Alaskan Natives on Indian land.

The State of Alaska has continuously exercised criminal jurisdiction over native and non-native criminal conduct on State, Federal or Indian land since its inception. All of Alaska's lands are subject to Alaska's fish and

game laws and benefit from the state's management of the resources, unless Congress dictates otherwise. Congress did dictate otherwise in *Metlakatla Indian Community, Annette Island Reserves v. Egan*, 396 U.S. 45 (1962) (state had no authority to regulate the use of fish traps on the reservation where valid federal regulations authorized by statute were controlling). This must be compared, however, with *Organized Village of Kake v. Egan*, 369 U.S. 60 (1962) (under Statehood Act, state may regulate use of fish traps by Native Americans, even in the face of federal regulations authorizing such traps, where no act of Congress establishes otherwise). In *Kake*, the court said "[t]his Court has never held that states lack power to regulate the exercise of aboriginal Indian rights, such as claimed or of those based on occupancy", 396 U.S. at 76.

In short, Congress has expressly ceded jurisdiction to Alaska. Jurisdiction in the state is well-established under Public Law 83-280 and the Statehood Act. Moreover, aboriginal hunting and fishing rights of Alaska Natives, if they ever existed, were extinguished by The Alaska Native Claims Settlement Act (ANCSA).

Public Law 280 and the Statehood Act dictate that the state has jurisdiction in this case.

Congress has specifically addressed the question of state criminal jurisdiction over Native Americans in six states, including Alaska. 18 U.S.C.A. § 1162 ("P.L. 280") states:

> (a) Each of the States or Territories listed in the following table shall have jurisdiction over offenses committed by or against Indians in the

areas of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has jurisdiction over offenses committed elsewhere within the State or Territory, and the criminal laws of such State or Territory shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory:

State or Territory of	*Indian country affected*
Alaska. . . .	All Indian country within the State, except that on Annette Islands the Metlakatla Indian community may exercise jurisdiction over offenses committed by Indians in the same manner in which such jurisdiction may be exercised by Indian tribes in Indian country over which State jurisdiction has not been extended.

P.L. 280 renders *Tyonek* completely irrelevant here. Alaska has criminal jurisdiction whether Indian country or not. Indeed, under the doctrine of *expressio unius est exclusio alterius*, the enumerated exception of the Annette Islands reserve conclusively establishes congressional intent to include all other Indian country within the state's criminal jurisdiction. *See Burrell v. Burrell*, 696 P.2d 157, 165 (Alaska 1984), ("It is an accepted rule of statutory construction that to include specific terms presumptively excludes those which are not enumerated.").

Congress itself clearly views hunting and fishing as within the purview of state criminal jurisdiction. Section 2(b) of P.L. 280 states "Nothing in this section shall . . . deprive any Indian or any Indian tribe, band, or

community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof." 18 U.S.C.A. § 1162(b). If hunting and fishing laws did not fall within the purview of Section 2(a), Section 2(b) would not have to except those hunting and fishing rights otherwise covered by treaty or other law.

Scott does not argue that Section 2(b) – the treaty exception – applies to his situation. Nor can he: there simply is no treaty or other law that allows him or his purported tribe the right to kill cow moose out of season. *Compare Metlakatla,* 369 U.S. 45 (residents of Indian Reserve in Alaska withdrawn from P.L. 280's grant of criminal jurisdiction over fish and game by virtue of interior department regulations as authorized by 1891 law of Congress) *with Kake,* 369 U.S. 60 (1962) (Native residents of Native villages subject to state regulation of fish and game by virtue of Statehood Act and P.L. 280).

Moreover, P.L. 280 contains a parallel provision granting certain enumerated states civil jurisdiction over Indians in Indian country, now codified at 28 U.S.C.A. § 1360.[1] 28 U.S.C.A. § 1360 does not contain an exception for hunting and fishing rights governed by other law. Congress believed that hunting and fishing were governed under the section of P.L. 280 granting criminal jurisdiction.

---

[1] The United States Supreme Court has held that P.L. 280's grant of civil jurisdiction is "more limited" than its grant of criminal jurisdiction. *Cabazon,* 480 U.S. at 207-08.

A federal district court recently addressed the question of P.L. 280's application to Alaska's hunting and fishing laws. In *Native Village of Tanana v. Cowper,* the plaintiff had argued, *inter alia,* that *Cabazon* precluded application of Alaska's fish and game laws to a Native American who shot a moose out of season. In its oral ruling granting partial summary judgment to the state, the court stated,

> Public Law 280 provides that Alaska has jurisdiction over offenses committed by Indians in Indian country. There is an exception to jurisdiction which would deprive an Indian or Indian tribe, band or community of a right, privilege or immunity if ordered under federal treaty agreement or statute with respect to hunting, trapping or fishing, at 1162(b). But the exception has not been shown to apply. It appears, therefore, that under Public Law 280 at 18 U.S.C. 1162, the state would have jurisdiction over fish and game offenses in and near the Village of Tanana except insofar as there may be particular areas of Indian country with some special status that this court is not aware of. *It appears that under Public Law 280, even if there is Indian country there, the state would have jurisdiction over it.*

Native Village of Tanana, Oral Ruling of the Court, at 9-10 (D.C. Alaska, Nov. 6, 1987) (Appendix A).

The court noted that its decision was governed by the United States Supreme Court decision in *Kake,* 369 U.S. 60. *Kake* involved the authority of the state to prohibit the use of fish traps throughout Alaska in the face of federal regulations permitting their use by Native people in the Native villages of Kake and Angoon. The Court first

turned its attention to Section 4 of the Alaska Statehood Act, P.L. 85-508, 72 Stat. 339, as amended by P.L. 86-70 2(a), 73 Stat. 141. 369 U.S. at 68. It concluded the provision that "the United States 'retains 'absolute jurisdiction and control' " over Indian property "does not exclude state conservation laws from appellants' fish traps." *Id.* In support, the Court quoted a portion of the legislative history of the Statehood Act:

> The State may well waive its claim to any right or title to the lands and still *have all of its political or police power with respect to the actions of people on those lands,* as long as that does not affect title to the land.

Id. at 69, (quoting Hearings Before Senate Committee on Interior and Insular Affairs on S. 50, 83d Cong., 2d Sess. 227, 283-287) (Senator Cordon) (1954) (emphasis added).

Importantly, the context of the Court's discussion concerned potential Indian title to property: the purported "Indian Country" which Scott is claiming exists here. Yet, *Kake* stands for the proposition that if Indian Country exists outside of the Metlakatla Reserve, the state, under the Statehood Act, still has "all of its political or police power with respect to the actions of the people on those lands." This holding specifically applied to enforcement of conservation laws.

The Court further supported its conclusion with a historical analysis of congressional grants to states of jurisdiction over Indians and Indian Country. It noted that "[b]y 1880. . . . a reservation was in many cases a part of the surrounding State or Territory, and subject to its jurisdiction except as forbidden by federal law. . . . " *Id.* at

72. Moreover, even after the policy of assimilation was reversed, "the influence of state law increased rather than decreased." *Id.* at 73.

Finally, *Kake* found the question of state jurisdiction over conservation laws decisively answered by Public Law 280. *Id.* at 75. The court concluded,

> This Court has never held that States lack power to regulate the exercise of aboriginal Indian rights, such as claimed here, or of those based on occupancy. Because the migratory habits of salmon, fish traps at Kake and Angoon are no merely local matter.
>
> Congress has neither authorized the use of fish traps at Kake and Angoon nor empowered the Secretary of the Interior to do so.

Id. at 76.

Similarly, here Congress has neither authorized Scott or his purported tribe to illegally possess or transport moose out of season, nor has it authorized the Secretary of the Interior to do so. Indeed, here, unlike *Kake*, the Secretary has not done so. As *Native Village of Tanana* recognized, *Cabazon* did not overrule *Kake*. *Native Village of Tanana* at 10-11. Accordingly, Scott has absolutely no basis for denying that the state has jurisdiction to try him for this crime.

ANCSA [sic] extinguished all aboriginal hunting and fishing rights.

Scott does not identify any treaty or statute as the source of his claimed right to hunt moose out of season. Presumably, because Scott apparently considers the

source of this right to spring from "Indian country," he must believe that his status as a Native American provides the requisite authority. Of course, as outlined above, state law would control even if Scott's race did generate such a privilege. In ANCSA, however, Congress extinguished any aboriginal hunting and fishing rights of Alaska Natives.

In ANCSA, congress stated its purpose as "there is an immediate need for a fair and just settlement of all claims by Natives . . . based on aboriginal land claims." 43 U.S.C.A. § 1601(a). To accomplish this, Congress awarded Alaska Natives $962,500,000 and 40,000,000 acres of land. *United States v. Atlantic Richfield,* 612 F.2d 1132, 1134 (9th Cir. 1980). In making this award, Congress stated:

> All aboriginal titles, if any, and claims of aboriginal title in Alaska based on use and occupancy, including submerged land underneath all water areas, both inland and offshore, and including any *aboriginal hunting of fishing rights that may exist,* are hereby extinguished.

43 U.S.C.A. § 1603(b) (emphasis added).

ANCSA disposes of Scott's claim. Unquestionably, Congress has the paramount authority to extinguish aboriginal claims, even without compensation. *See Tee-hit-ton Indians v. United States,* 348 U.S. 272, 279-85, 288-89 (1955). As one court construing this statute concluded, "[a]boriginal fishing and hunting rights are precisely the kind of rights Congress wished to extinguished [sic]." *People of Village of Gambell v. Clark,* 746 F.2d 572, 577 (9th Cir. 1984), *rev'd on other grounds, Amoco Production Co. v. Village of Gambell,* 480 U.S. 531 (1987). *See also Atlantic Richfield,* 612 F.2d at 1134 (ANCSA "extinguished not only

the aboriginal titles of all Alaska Natives, but also every claim 'based on' aboriginal title"). In sum, notwithstanding *Tyonek*, Scott's status as non-Alaska Native does not provide a basis for his assertion of extralegal rights.

This taking of game was not authorized by any Tribe and did not occur in Indian Country.

If any cognizable claim that a non-Alaska Native may ignore state fish and game laws exists in the abstract, it does not exist here. In short, even if the Statehood Act and P.L. 280 did not grant jurisdiction to the state, and even if ANCSA had not extinguished aboriginal hunting and fishing rights, Scott could not claim the right to illegally posses or transport moose out of season. Under existing state law precedents, which this court must follow, Scott is neither a member of a tribe nor did was [sic] he in Indian country at the time of his kill.

Tyonek is not binding on this court.

This court is bound by decisions of the Alaska Supreme Court. The most recent Alaska Supreme Court precedent on Indian law issues is *Native Village of Stevens v. Alaska Management & Planning*, 757 P.2d 32 (1988). The court held that the Native Village of Stevens was not immune from suit on the basis of sovereign immunity. It applied that holding to Native Villages outside Annette

Islands generally, concluding that "Congress has demonstrated its intent that Alaska Native communities not be accorded sovereign tribal status." *Id.* at 41.[2]

In support of this conclusion, the court found that there were no tribes in Alaska other than the Metlakatlans. *Id.* at 36. Accordingly, Scott cannot claim any tribal authority for his illegal activity. Additionally, the court quoted with approval its previous finding that "[t]here is not now and never has been an area of Alaska recognized as Indian country with one possible exception."[3] *Id.* at 35, *quoting Metlakatla Indian Community, Annette Island Reserve v. Egan*, 362 P.2d 901 (Alaska 1962), *rev'd in part*, 369 U.S. 45 (1962), *aff'd in part, Organized Village of Kake v. Egan*, 369 U.S. 60 (1962).

Alaska cases have noted the uniqueness of the Native Village of Tyonek. *See Native Village of Stevens*, 757 P.2d at 35 n.4 ("Tyonek is unique among Alaska villages . . . because Tyonek occupied an Executive Order Reservation at the time it adopted a constitution and bylaws under the Alaska Indian Reorganization Act"). Accordingly, under Alaska law, this court must recognize the Ninth Circuit's decision in *Tyonek* is strictly limited to its facts and the subsequent decision of the Supreme

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[2] The court noted that Villages might have sovereign immunity if they are granted local government powers on a reservation. 757 P.2d at 40. Scott has not, and cannot, make such a claim.

[3] The possible exception the *Metlakatla* court was referring to was the Moquawkie reserve of the Native Village of Tyonek. *Native Village of Stevens*, 757 P.2d at 35 n.4. Whether Annette Islands was "Indian country" is a moot point. *See* 18 U.S.C. § 1162(a); *Metlakatla*, 369 U.S. 45.

Court in *Tyonek* reversing the Ninth Circuit. This court must follow Alaska law, which acknowledges the uniqueness of the Native Village of Tyonek, but recognizes no tribal authority in Alaska other than the Metlakatlans. Under Alaska law, Scott's status as a non-Metlakatlan Alaska Native cannot create a privilege to avoid application of state fish and game laws.

DATED at Fairbanks, Alaska, this 15th day of September, 1992.

CHARLES E. COLE
ATTORNEY GENERAL

HARRY L. DAVIS
DISTRICT ATTORNEY

By: /s/ Jeffrey O'Bryant
Jeffrey O'Bryant
Assistant District
Attorney

THIS IS TO CERTIFY THAT A COPY OF THE FOREGOING IS BEING: ___ MAILED ___ HAND DELIVERED TO THE FOLLOWING ATTORNEY(S) OR PARTIES OF RECORD:

_____

NAME DATE

IN THE DISTRICT COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT

STATE OF ALASKA,)
Plaintiff,)
vs.)
JEFFERY D. SCOTT,)
Defendant.)
)

Case No. 4TO-S92-83 Cr.

CERTIFICATION

[XXX] This document and its attachments do not contain information that is confidential under AS 12.61.110 or the name of a victim of a crime listed in AS 12.61.140.

[___] This document or an attachment contains confidential information that may be placed in a court file under an exception listed in AS 12.61.130(b). This information appears at page(s) ___. This document and its attachments do not contain the name of a victim of a crime listed in AS 12.61.140.

ORDER

This matter having come before this court, and the court being fully advised in the premises, it is hereby ORDERED that the defendant's motion to dismiss for lack of state jurisdiction is hereby DENIED.

DATED at Fairbanks, Alaska, this ___ day of September, 1992.

DISTRICT COURT JUDGE

THE DISTRICT COURT FOR THE STATE OF ALASKA
FOR THE FOURTH JUDICIAL DISTRICT IN TOK

STATE OF ALASKA,)
Plaintiff,)
)
vs.)
)
JEFFERY D. SCOTT,)
Defendant.)
)

Case No. 4TO-S92-83 CR

REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS DUE TO LACK OF STATE JURISDICTION

(Filed Sep. 23, 1992)

This document and its attachments do not contain information that is confidential under A.S. 12.61.110 or the name of a victim of a crime listed in A.S. 12.61.140.

COMES NOW the defendant, Jeffery D. Scott, by and through his attorney, Sheri L. Donaldson, and hereby enters his reply to the plaintiff's opposition to the defendant's motion to dismiss due to lack of State jurisdiction. This reply is supported by the attached memorandum.

DATED at Fairbanks, Alaska this 21st day of September, 1992.

TANANA CHIEFS CONFERENCE, INC.

/s/ Sheri L. Donaldson
Sheri L. Donaldson
Attorney for Mr. Scott

This is to certify that a copy of this Reply was hand-delivered on September 21st, 1992 to the following parties or attorneys of record: District Attorney's office.

/s/ Vera Wells 9-21-92
Date

IN THE DISTRICT COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT TOK

STATE OF ALASKA,)
Plaintiff,)
)
vs.)
)
JEFFERY D. SCOTT,)
Defendant.)
)

Case No. 4TO-S92-83 CR

MEMORANDUM IN SUPPORT OF REPLY

(Filed Sep. 23, 1992)

The defendant moves for a dismissal of the charge for the reason that the State has no jurisdiction to prosecute this State regulation in Indian Country.

The State instead claims that P.L. 280 gives the State "criminal" jurisdiction in Indian Country, and cites 18 U.S.C.A. Section 1162 for authority. The defendant will now respond to the State's opposition, and asks the Court's indulgence in this necessarily lengthy reply.

"Indian Country" is defined in 18 U.S.C. Section 1151(b) as all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state. The application of the term "Indian Country" does not depend upon the manner in which the land was acquired, but rather on whether such land has been set apart for the use and occupancy of Indians. *State v. Youngbear,* 229 N.W.2d 728, 732 (Iowa 1975). *See also United States v. McGowan,* 302 U.S. 535, 58 S.Ct. 286, 82 L.Ed.410; *United States v. Sandoval,* 231 U.S. 28, 34 S.Ct. 1, 58 L.Ed. 107 (1913); *People of South Naknek v. Bristol Bay Bor.,* 466 F. Supp. 870 (D. Ak 1979). An Indian group is a "tribe or band" with a "duly recognized" governing body if: (1) whether the Indian group has a governing body approved by the Secretary of the Interior under 25 U.S.C. Section 476, or (2) whether the Indian group is a group or village listed as a native village in the *Alaska Native Claims Settlement Act,* 43 U.S.C. Section 1610(b)(1). *Native Village of Venetie v. Alaska,* 944 F.2d 548, 551 (9th Cir. 1991). The Native Village of Northway satisfies the second criteria in that it is listed as a Native village subject to the Act under the Alaska Native Claims Settlement Act. The Native Village of Northway has also enacted its own Constitution and has a fully functioning Tribal Court.

The State is mistaken in applying a criminal jurisdiction model because it is clear that 28 U.S.C. Section 1360(a) (governing a State's *civil* jurisdiction in Indian Country) instead controls. In *Bryan v. Itasca County,* 426 U.S 373, 48 L.Ed.2d 710, 723, 96 S.Ct. 2102 (1976) the Court analyzed P.L. 280 civil jurisdiction and found that

28 U.S.C. was not a congressional grant of power to tax reservation Indians. In *New Mexico v. Mescalero Apache Tribe,* 462 U.S. 324, 76 L.Ed.2d 611, 627, 103 S.Ct. 2378 (1983), the Court found that the Mescalero Apache Tribe lawfully exercised substantial control over the lands and resources of its reservation, including its wildlife. Indian tribes are unique aggregations possessing attributes of sovereignty over both their members and their territory. *Id.* at 76 L.Ed.2d 619. Because of their sovereign status, tribes and their reservation lands are insulated in some respects by a historic immunity from state and local control. *Id.* The sovereignty retained by tribes includes the power of regulating their internal and social relations. *Id.; See also United States v. Kagama,* 118 U.S. 375, 381-382, 30 L.Ed. 228, 6 S.Ct. 1109 (1886); *United States v. Wheeler,* 435 U.S. 313, 322, 55 L.Ed. 2d 303, 98 S.Ct. 1079 (1978). Tribes in general retain this authority to regulate the use of its resources by members as well as nonmembers. *Mescalero Id.* at L.Ed.2d 622; *See also Montana v. United States,* 450 U.S. 544, 558-559, 67 L.Ed.2d 493, 510-511, 101 S.Ct. 1245 (1981) (the tribe may prohibit nonmembers from hunting and fishing on land belonging to the tribe; a tribe may retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe); *United States v. Winans,* 198 U.S. 371, 381, 49 L.Ed. 1089, 25 S.Ct. 662 (1905) (hunting and fishing were not much less necessary to the existence of the Indians than the atmosphere they breathed).

The Supreme Court in *Mescalero* also stated that this aspect of tribal sovereignty has been expressly confirmed by numerous federal statutes. *Id.* at L.Ed.2d 623. P.L. 280 specifically confirms the power of tribes to regulate on-reservation hunting and fishing. *Id.* This authority is afforded the protection of the federal criminal law by 18 U.S.C. Section 1165 which makes it a violation of federal law to enter Indian land to hunt, trap, or fish without the consent of the tribe. *Id.* The tribe's authority to regulate hunting and fishing preempts state jurisdiction. *Id.*

In *California v. Cabazon Band of Indians*, 480 U.S. 202, 94 L.Ed.2d 244, 254, 107 S.Ct. 1083 (1987), the Court stated that when a State seeks to enforce a law within an Indian reservation under the authority of P.L. 280, it must be determined whether the law is criminal in nature, and thus fully applicable to the reservation, or civil in nature, and applicable only as it may be relevant to private civil litigation in state court.

The Court in *Cabazon* employed a new test that originated in *Barona Group of the Capitan*, 694 F.2d 1185 (1982) cert. den., 461 U.S. 929, 77 L.Ed.2d 301, 103 S.Ct. 2091 (1983). *Id.* at L.Ed.2d 255. In *Barona*, the Court drew a distinction between state "criminal/prohibitory" laws and state "civil/regulatory" laws: if the intent of a state law is generally to prohibit certain conduct, if falls within P.L. 280's grant of criminal jurisdiction, but if the state law generally permits the conduct, subject to regulation, it must be classified as civil/regulatory and P.L. 280 does not authorize its enforcement on an Indian reservation. *Id.*

This rule was employed in *Oneida Tribe of Indians of Wisconsin v. State*, 518 F.Supp. 712, 719 (W.D. Wis. 1981) where the Court found that Wisconsin's bingo laws were civil-regulatory, not enforceable by the State in Indian Country. When Congress conferred jurisdiction on the State to enforce its criminal laws on the Oneida Reservation, Congress intended to limit the exercise of that jurisdiction to enforcement of laws generally prohibiting activities that the state determined are too dangerous, unhealthy, or otherwise detrimental to the well-being of the state's citizens. *Id.* at 720. Congress did not intend to allow states to use licensing requirements in an attempt to create jurisdiction to enforce otherwise civil regulations on Indian reservations. *Id.; See also Seminole Tribe of Florida v. Butterworth*, 658 F.2d 310 (5th Cir. 1981) (Florida bingo statute is "civil/regulatory", rather than "criminal/prohibitory" in nature); *United States v. Farris*, 624 F.2d 890 (9th Cir. 1980); *United States v. County of Humboldt*, 615 F.2d 1280 (9th Cir. 1980); *Santa Rosa Band of Indians v. Kings County*, 532 F.2d 655 (9th Cir. 1975).

In *U.S. v. Marcyes*, 557 F.2d 1361, 1364 (9th Cir. 1977) the Ninth Circuit Court of Appeals examined the State's fireworks law, and found that it was prohibitory, rather than regulatory. The Court stated:

> "The possession of fireworks is not the same situation encountered *in other regulatory schemes such as hunting or fishing, where a person who wants to hunt or fish merely has to pay a fee and obtain a license. The purpose of such statutes is to regulate the described conduct and to generate revenues.* In contrast, the purpose of the fireworks laws is not to generate income, but rather to prohibit their general use and possession in a

legitimate effort to promote the safety and health of all citizens."

Id. at 557 F.2d 1364 (Emphasis added).

In *Harrison v. State,* 791 P.2d 359, 362, footnote 4, (Alaska App. 1990) the Court stated that Alaska statutes which govern ownership and operation of motor vehicles are regulatory, and were not within the grant of criminal jurisdiction contained in 18 U.S.C. 1162. Consequently, the statutes violated by the defendant are not within the grant of criminal jurisdiction contained in P.L. 280. *Id.*

The Court in *Native Village of Venetie v. Alaska,* 944 F.2d 548, 60 (9th Cir. 1991) recently analyzed P.L. 280. It found that P.L. 280 was designed not to supplant tribal institutions, but to supplement them. *Id.* P.L. 280 is not a divestiture statute. *Id.; See also California v. Cabazon Band of Mission Indians,* 480 U.S. 202, 207-212, 107 S.Ct. 1083, 1087-90 (1987); *Walker v. Rushing,* 898 F.2d 672, 675 (8th Cir. 1990) (P.L. 280 did not itself divest Indian tribes of their sovereign power to punish their own members for violations of tribal law; nothing in the working of P.L. 280 or its legislative history precludes concurrent jurisdiction).

It is clear that a jurisdictional presumption exists in federal Indian law that a state has no jurisdiction over Indians on a reservation unless it has been explicitly granted that jurisdiction. *People of South Naknek v. Bristol Bay Borough,* 466 F.Supp. 870, 876 (D.Ak 1979). Indian affairs are subject to state law only to the extent that Congress explicitly so provides. *Ollestead v. Native Village of Tyonek,* 560 P.2d 31, 34 (Alaska 1977).

Therefore, it is clear that any jurisdiction that Alaska may have over Northway "Indian Country" under P.L. 280 would be civil, not criminal, for hunting and fishing are generally allowed, not prohibited, within the State and is regulated by Alaska law. Therefore, the State of Alaska is not allowed to enforce its civil regulations in Northway Indian Country, especially in the face of Indian custom or practice that may dictate a different outcome than under Alaska State law. The Tribe's authority to regulate, or not regulate, hunting on its Indian Country preempts state jurisdiction.

The Native Village of Northway should be able to formulate whatever hunting restrictions it wants on its own land under its inherent powers of tribal sovereignty. It does not need the eternally-patronizing State of Alaska to tell them how, when, or who can hunt on their own Indian land. Mr. Scott's status as a non-native has nothing to do with the issue discussed in this motion, whether the State has jurisdiction to prosecute this offense which occurred in Indian Country. Prior cited caselaw in this motion shows that a tribe's jurisdiction concerning hunting and fishing regulations extends to non-members as well as tribal members. The State claims that there are no tribes in Alaska other than the Metlakatlans, but doesn't state exactly what specific federal statute extinguished and terminated all other Indian tribes in Alaska. The powers of Indian tribes are inherent powers of a limited sovereignty which have never been extinguished. *U.S. v. Wheeler*, 435 U.S. 313, 322-23, 98 S.Ct. 1079, 1085-86, 55 L.Ed.2d 303, 312-13 (1978).

The appropriate rules of statutory construction in federal Indian law are different than those usually

applied under State law. Statutes instead are to be construed liberally in favor of the Indians; ambiguous provisions are to be interpreted to the Indians' benefit. *Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759, 766, 105 S.Ct. 2399, 2403, 85 L.Ed.2d 753 (1985).

It is clear that federal Courts have moved away from a termination/assimilation interpretation of federal statutes, toward a reaffirmation of inherent tribal sovereignty. Favorable rules of judicial construction apply to Indian legislation because "Indians stand in a special relation to the federal government from which the states are excluded, unless Congress has manifested a clear purpose to terminate immunity and allow states to treat Indians as part of the general community." *Oklahoma Tax Comm'n v. United States*, 319 U.S. 598, 613-14 (1943).

This principle applies equally to ANSCA. *See Hackla v. Atxam Corp.*, 753 P.2d 1144, 1147 (Alaska 1988) (ambiguities in ANCSA, as in other federal statutes for the benefit of the Indians, are to be construed in favor of the Indians). Tribal status and governmental powers survive the termination of a reservation unless clearly and unequivocally extinguished by Congress. *United States v. Santa Fe Pacific R.R.*, 314 U.S. 339, 353 (1941); *Decoteau v. District County Court*, 420 U.S. 425, 442-44 (1975); *Menominee Tribe of Indians v. United States*, 391 U.S. 404 (1968); *Kimball v. Callahan*, 590 F.2d 768, 776-77 (9th Cir., cert. den. 444 U.S. 826 (1979). Federal courts have ruled that this principle applies equally to ANCSA villages. *See Chilkat Indian Village v. Johnson*, No. J84-024 Civ. (D. Alaska, Oct. 9, 1990) (if Chilkat had governmental power under its status as a reservation ANCSA did nothing to

extinguish those powers); *Native Village of Tyonek v. Puckett*, 890 F.2d 1054 (9th Cir. 1989) (ANCSA did not abrogate Tyonek's tribal sovereign immunity); *Blatchford v. Native Village of Noatak and Circle Village*, ___ U.S. ___, 111 S.Ct. 2578, 115 L.Ed.2d 686 (1991) (ANCSA constitutes Congressional recognition of Native Villages as Indian tribes). The federal government's special relationship with Alaska Natives to facilitate the goals of self-determination is evidenced by the fact that ANCSA villages have been recognized in virtually all modern Indian legislation enacted since 1971. *See* 25 U.S.C. Section 450a(b), 450b(e); 25 U.S.C. Section 1901 et. seq.; 25 U.S.C. Section 1451, 1452(c); 31 U.S.C. Section 7102; 26 U.S.C. Section 7701(40), 7871.

Although all Indian reserves except one in Alaska were revoked under ANCSA, no attempt was made under the statute to limit the authority of the Native villages, either the many villages that had organized pursuant to the IRA or those that had governed according to their inherent tribal authority. Getches & Wilkinson, *Federal Indian Law*, pg. 778 (West 1986).

In the absence of a clear Congressional intent to terminate aboriginal hunting rights in Northway Indian Country, it is clear that ANSCA did not extinguish these hunting rights.

The State cites *Organized Village of Kake v. Egan*, 369 U.S. 60, 7 L.Ed. 2d 573, 82 S.Ct. 562 (1962) to support its claim that there is no Indian Country in Alaska except the Metlakatla reservation. Instead, in that case, the Court merely found that P.L. 280 disclaims the intention to permit State to interfere with federally granted fishing

privileges or uses of property, and that the State has power to regulate off-reservation fishing by Indians. *Id.* at 583. In another case the State cites, *Metlakatla Indian Community v. Egan*, 369 U.S. 45, 7 L.Ed.2d 562, 571, 82 S.Ct. 552 (1962), the United States Supreme Court stated that Section Four of the Alaska Statehood Act, as amended by 73 Stat. 141, required Alaska to disclaim all right and title to any United States property not granted her by the statute, and also "to any lands or other property (including fishing rights), the right or title to which may be held by any Indians, Eskimos, or Aleuts (hereinafter called natives) or is held by the United States in trust for said natives. Legislative history of the Act makes clear that the transfer of jurisdiction over fishing was subject to rights reserved in Section Four. *Id.* The Court stated that this section does not protect only "recognized" Indian rights – those the taking of which would be compensable by the United States. *Id.* at L.Ed.2d 572. The aim of Congress was to preserve the status quo as to a broader class of "right", including, in the case of land, mere possession or occupancy. *Id.* The Act clearly preserves federal authority over the reservation. *Id.*

In *Native Village of Stevens v. A.M.P.*, 757 P. 2d 32, 40 (Alaska 1988) the Court inexplicably finds that the power of local government (tribal sovereignty) cannot be extended to the village because it is not a "reservation". Clearly, the Court's conclusion flies in the face of basic federal Indian law which accords tribal sovereign powers to an Indian tribe in Indian Country, and which states that these powers are not extinguished or terminated unless there is a clear Congressional intent to do so. A reservation is clearly only one type of "Indian Country."

In issues of federal law, such as this, lower Alaska courts are not bound by Alaska Supreme Court decisions, but are bound to follow United States Supreme Court decisions. At this point, it is obvious that Alaska courts are taking an adverse political stance against tribal sovereign rights. At least one Superior Court Judge and Chief Justice, though, are in agreement about tribal self-government powers of Native Villages (*See Nenana Fuel Co. Inc. v. Venetie*, No. 3869 (Alaska July 24, 1992).

DATED at Fairbanks, Alaska this 21st day of September, 1992.

/s/ Sheri L. Donaldson
Sheri L. Donaldson
Attorney for Mr. Scott

IN THE DISTRICT COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT TOK

STATE OF ALASKA,)
Plaintiff,)
)
v.)
)
JEFFERY D. SCOTT,)
Defendant.)
)

Case No. 4TO-S92-83 CR

ORDER

The defendant having filed his Motion to Dismiss Based on Lack of State Jurisdiction and the Court being fully advised in the premises; it is hereby ordered that the motion is GRANTED.

DATED this ___ day of ___, 1992.

DISTRICT COURT JUDGE